

No. , Original

Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ALABAMA, Complainant,

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY;
DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER
PRIEST, Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT
AND
COMPLAINT

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September 26, 1953.

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MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

The State of Alabama, by its Attorney General, asks leave of the Court to file the complaint submitted herewith against the State of Texas, the State of Louisiana, the State of Florida, the State of California, George M. Humphrey, Douglas McKay, Robert B. Anderson, and Ivy Baker Priest.

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COMPLAINT

The State of Alabama, by its Attorney General, brings this action against the defendants, the State of Texas, the State of Louisiana, the State of Florida, the State of California, and the following named individuals: George M. Humphrey, acting under color of authority as Secretary of the Treasury; Douglas McKay, acting under color of authority as Secretary of the Interior; Robert B. Anderson, acting under color of authority as Secretary of the Navy; and Ivy Baker Priest, acting under color of authority as Treasurer of the United States, and for its cause of action states:

I

The jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States, and Title 28, United States Code, Section 1251.

II

The State of Alabama, the complainant herein, is a state of the Union, admitted to the Union in 1819 pursuant to the Act of Congress of March 2, 1819, c. 47, (3 Stat. 489), which provided that the State of Alabama should be admitted into the Union upon the same footing with the original states, in all respects whatever.

III

The State of California, a defendant herein, is a state of the Union, admitted to the Union in 1850 pursuant to the Act of Congress of September 9, 1850, c. 50, (9 Stat. 452), which provided that the State of California should be admitted to the United States on an equal footing with the original states.

IV

The State of Louisiana, a defendant herein is a state of the Union, admitted to the Union in 1812 pursuant to the Act of Congress of April 8, 1812, c. 50, (2 Stat. 701), which provided that the State of Louisiana should be admitted to the United States on an equal footing with the original states.

V

The State of Texas, a defendant herein, is a state of the Union, admitted to the Union in 1845 pursuant to the Joint Resolution of Congress of March 1, 1845, No

8, (5 Stat. 797), which provided that the State of Texas should be admitted to the United States on an equal footing with the original states.

VI

The State of Florida, a defendant herein, is a state of the Union, admitted to the Union in 1845 pursuant to the Act of Congress of March 3, 1845, c. 48, (5 Stat. 742), which provided that the State of Florida should be admitted to the United States on an equal footing with the original states.

VII

When the complainant (the State of Alabama) and the defendants the States of California, Louisiana, Texas and Florida came into the Union in the manner described in paragraphs II through VI of this Complaint, each became a sister state on an equal footing with the original states and hence on an equal footing with each other in all respects whatever.

VIII

Defendant George M. Humphrey is the Secretary of the Treasury and a citizen of the State of Ohio; defendant Douglas McKay is the Secretary of the Interior of the United States and is a citizen of the State of Oregon; defendant Robert B. Anderson is the Secretary of the Navy of the United States and is a citizen of the State of Texas; defendant Ivy Baker Priest is the Treasurer of the United States and is a citizen of the State of Utah.

IX

The United States is now and has been at all pertinent times prior hereto, possessed of paramount rights

in, and full dominion and power over, and the exclusive jurisdiction and control over, the lands, minerals and other natural resources of the subsoil and seabed underlying the Pacific Ocean lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters, extending seaward three nautical miles to the limit of the territorial boundaries of the United States and bounded on the North and South, respectively, by the northern and southern boundaries of the State of California. The United States acquired these rights as attributes of national sovereignty in the manner described by this Court in *United States v. California*, 332 U.S. 19; *United States v. Louisiana*, 339 U.S. 699; and *United States v. Texas*, 339 U.S. 707, and holds and has held these rights and the revenues derived therefrom as trustee for all the states and citizens of the United States, including the State of Alabama and the citizens thereof.

X

Insofar as the states of the United States and the citizens thereof are concerned, the United States is now and has been at all pertinent times prior hereto, possessed of paramount rights in, full dominion and power over and the exclusive jurisdiction and control over the lands, minerals and other natural resources of the subsoil and seabed underlying the Gulf of Mexico seaward from the ordinary low water mark along that portion of the coast of Texas which is in direct contact with the open sea and from the seaward limit of inland waters, extending seaward three marine leagues (nine nautical miles) into the Gulf of Mexico. The United States acquired these rights as attributes of national sovereignty in the manner described by the Court in

United States v. California, 332 U.S. 19; *United States v. Louisiana*, 339 U.S. 699; and *United States v. Texas*, 339 U.S. 707, and holds and has held these rights and the revenues derived therefrom as trustee for all the states and the citizens of the United States, including the State of Alabama and the citizens thereof.

XI

The State of Alabama, by virtue of its rights to be treated on an equal footing with the State of Texas set forth in paragraph VII of this Complaint, is entitled to be treated on an equal footing with the State of Texas with respect to the width of the belt of territorial waters measured seaward from the ordinary low water mark along that portion of the coast which is in direct contact with the open sea and from the seaward limit of inland waters. The rule of international law which has been settled and established for the United States by virtue of determinations made by the Government of the United States is that the permissible width of this belt is three nautical miles. This rule is binding equally on the State of Alabama and on the State of Texas. The area more than three nautical miles seaward from the low water mark along the portion of the coast of Texas which is in direct contact with the open sea and from the seaward limit of inland waters along the coast of Texas (and in particular the area from three to nine nautical miles from such line) is therefore part of the high seas and outside the territorial boundaries of Texas.

XII

Citizens of Alabama are now, and have been at all pertinent times prior hereto, possessed of the privilege

(to be exercised without restriction, prohibition or regulation by other states of the Union or by foreign powers) to use, maintain, develop, enjoy, catch, trap and gather the fish, shrimp, crabs, lobsters and other marine animal and plant life within the area in the Gulf of Mexico lying seaward from the ordinary low water mark along that portion of the coast of Texas which is in direct contact with the open sea and from the seaward limit of inland waters, extending seaward three marine leagues into the Gulf of Mexico, subject only to the rights of the State of Texas to impose lawful police measures in the area within three nautical miles of such line in the absence of inconsistent Federal regulation.

XIII

Insofar as the states of the United States and the citizens thereof are concerned, the United States is now and has been at all pertinent times prior hereto, possessed of paramount rights in, full dominion and power over and the exclusive jurisdiction and control over the lands, minerals and other natural resources of the subsoil and seabed underlying the Gulf of Mexico seaward from the ordinary low water mark along that portion of the coast of Louisiana which is in direct contact with the open sea and from the seaward limit of inland waters, extending seaward three marine leagues into the Gulf of Mexico. The United States acquired these rights as attributes of national sovereignty in the manner described by this Court in *United States v. California*, 332 U.S. 19; *United States v. Louisiana*, 339 U.S. 699; and *United States v. Texas*, 339 U.S. 707 and holds and has held these rights and revenues derived therefrom as trustee for all the states and citizens of the United States, including the State of Alabama and the citizens thereof.

XIV

The State of Alabama, by virtue of its right to be treated on an equal footing with the State of Louisiana set forth in paragraph VII of this Complaint, is entitled to be treated on an equal footing with the State of Louisiana with respect to the width of the belt of territorial waters measured seaward from the ordinary low water mark along that portion of the coast which is in direct contact with the open sea and from the seaward limit of inland waters. The rule of international law which has been settled and established for the United States by virtue of determinations made by the Government of the United States is that the permissible width of this belt is three nautical miles. This rule is binding equally on the State of Alabama and on the State of Louisiana. The area more than three nautical miles seaward from the line of low water mark along the portion of the coast of Louisiana which is in direct contact with the open sea and from the seaward limit of inland waters along the coast of Louisiana (and in particular the area from three to nine nautical miles from such line) is therefore part of the high seas and outside the territorial boundaries of Louisiana.

XV

Citizens of Alabama are now, and have been at all pertinent times prior hereto, possessed of the privilege (to be exercised without restriction, prohibition or regulation by other states of the Union or by foreign powers) to use, maintain, develop, enjoy, catch, trap and gather the fish, shrimp, crabs, lobsters and other marine animal and plant life within the area in the Gulf of Mexico lying seaward from the ordinary low water mark along the portion of the coast of Louisiana

which is in direct contact with the open sea and from the seaward limit of inland waters, extending seaward three marine leagues into the Gulf of Mexico subject only to the right of the State of Louisiana to impose lawful police measures in the area within three nautical miles of such line in the absence of inconsistent Federal regulation.

XVI

Insofar as the states of the United States and the citizens thereof are concerned, the United States is now and has been at all pertinent times prior hereto, possessed of paramount rights in, full dominion and power over and the exclusive right to jurisdiction and control over the lands, minerals and other natural resources of the subsoil and seabed underlying the Gulf of Mexico lying seaward from the ordinary low water mark along that portion of the coast of Florida which is in direct contact with the open sea and from the seaward limit of inland waters, extending seaward three marine leagues into the Gulf of Mexico. The United States acquired these rights as attributes of national sovereignty in the manner described by this Court in *United States v. California*, 332 U.S. 19; *United States v. Louisiana*, 339 U.S. 699; *United States v. Texas*, 339 U.S. 707, and holds and has held these rights and the revenues derived therefrom as trustee for all the states and the citizens of the United States, including the State of Alabama and the citizens thereof.

XVII

The State of Alabama, by virtue of its right to be treated on an equal footing with the State of Florida set forth in paragraph VII of this Complaint, is entitled to be treated on an equal footing with the State

of Florida with respect to the width of the belt of territorial waters measured seaward from the ordinary low water mark along that portion of the coast which is in direct contact with the open sea from the seaward limit of inland waters. The rule of international law which has been settled and established for the United States by virtue of determinations made by the Government of the United States is that the permissible width of this belt is three nautical miles. This rule is binding equally on the State of Alabama and on the State of Florida. The area more than three nautical miles seaward from the line of low water mark along the portion of the coast of Florida which is in direct contact with the open sea and from the seaward limit of inland waters along the coast of Florida (and in particular the area from three to nine nautical miles from such line) is therefore part of the high seas and outside the territorial boundaries of Florida.

XVIII

Citizens of Alabama are now, and have been at all pertinent times prior hereto, possessed of the privilege (to be exercised without restriction, prohibition or regulation by other states of the Union or by foreign powers) to use, maintain, develop, enjoy, catch, trap and gather the fish, shrimp, crabs, lobsters and other marine animal and plant life within the area in the Gulf of Mexico lying seaward from the ordinary low water mark along the portion of the coast of Florida which is in direct contact with the open sea and from the seaward limit of inland waters, extending seaward three marine leagues in the Gulf of Mexico subject only to the right of the State of Florida to impose lawful police measures in the area within three nautical

miles of such line in the absence of inconsistent Federal regulation.

XIX

The value of the natural resources of the subsoil and seabed off the coast of the defendants California, Texas, Louisiana and Florida and referred to in paragraphs IX, X, XIII and XVI of this Complaint is in excess of fifty billion dollars.

XX

The value of the natural resources of the fisheries and other marine animal and plant life found off the coast of the defendants Texas, Louisiana and Florida referred to in paragraphs XII, XV and XVIII of this Complaint varies from time to time due to the migratory nature of many of these resources. The exercise of the right to gather these resources referred to in paragraphs XII, XV and XVIII of this Complaint plays an essential role in the maintenance of a fishing industry in Alabama on which thousands of Alabama citizens are wholly or partially dependent for their livelihood and the gross revenue from which averages \$15,000,000 a year.

XXI

The State of California has asserted, and is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) continuing to assert ownership of, full dominion and power over, and the exclusive jurisdiction and control over the lands, minerals and other natural resources of the subsoil and seabed described in paragraph IX of this Complaint contrary to the decision and judgment of this Court in *United States v. Cali-*

fornia, 332 U.S. 19. As part of these assertions the State of California has made enactments and regulations with respect to such natural resources and has negotiated and executed, and continues to negotiate and execute, numerous leases and licenses with various persons and corporations authorizing them to enter upon the area described in paragraph IX of this Complaint and take petroleum, gas, mineral deposits and other natural resources of the subsoil described in paragraph IX of this Complaint. The State of California has received and is receiving large sums of money from these leases and licenses, which sums of money have been applied and are being applied for the exclusive benefit of the State of California and the citizens thereof, thereby unlawfully attempting to deprive the complainant and its citizens of their equitable interest in the rights and revenues described in paragraph IX of this Complaint and held by the United States for the benefit of all the states and citizens of the United States, including the complainant, the State of Alabama, and the citizens thereof. The State of California will continue to engage in the course of conduct described in this paragraph unless prevented from doing so by this Court.

XXII

The State of Texas has asserted, and is continuing to assert, that its territorial boundaries include the high seas off the coast of Texas extending into the Gulf of Mexico to the edge of the continental shelf, an area which extends into the Gulf of Mexico more than fifty and as much as one hundred fifty nautical miles seaward from the ordinary low water mark along that portion of the coast of Texas which is in direct contact with the

open sea and from the seaward limit of inland waters. In consequence, the claims of Texas (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) described in the following paragraphs XXIII and XXIV of this Complaint relate not only to the natural resources described in those paragraphs which are found within three nautical miles seaward into the Gulf of Mexico from the ordinary low water mark along that portion of the coast of Texas which is in direct contact with the open sea and from the seaward limit of inland waters, but also the natural resources found on the high seas in the area between three to nine miles seaward into the Gulf of Mexico from such a line.

XXIII

The State of Texas has asserted, and is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) continuing to assert ownership of, full dominion and power over, and the exclusive jurisdiction and control over the land, minerals and other natural resources of the subsoil and seabed described in paragraph X of this Complaint, contrary to the decision and judgment of this Court in *United States v. Texas*, 339 U.S. 707; and the decision of this Court in *United States v. California*, 332 U.S. 19. As part of these assertions the State of Texas has made enactments and regulations with respect to such natural resources and has negotiated and executed, and continues to negotiate and execute, numerous leases and licenses with various persons and corporations authorizing them to enter upon the area described in paragraph X of this Complaint and take petroleum, gas, mineral deposits and other natural resources of the subsoil described in paragraph X of this Complaint. The State of Texas

has received and is receiving large sums of money from these leases and licenses, which sums of money have been applied and are being applied for the exclusive benefit of the State of Texas and the citizens thereof, thereby unlawfully attempting to deprive the complainant and its citizens of their equitable interest in the rights and revenues described in paragraph X of this Complaint and held by the United States for the benefit of all the states and citizens of the United States, including the complainant, the State of Alabama, and the citizens thereof. The State of Texas will continue to engage in the course of conduct described in this paragraph unless prevented from doing so by this Court.

XXIV

The State of Texas is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) asserting ownership, full dominion and power over, and the exclusive jurisdiction and control over the fish, shrimp, crabs, lobsters and other marine animal and plant life described in paragraph XII of this Complaint, and is requiring citizens of Alabama, under pain and risk of severe criminal penalties, to pay license fees and excise taxes for the privilege long enjoyed and exercised to use, maintain, develop, enjoy, catch, trap and gather such marine animal and plant life in the area in the Gulf of Mexico which is between three and nine nautical miles seaward from the ordinary low water mark along that portion of the coast of Texas which is in direct contact with the open sea and from the seaward limit of inland waters, an area which is part of the high seas. Moreover, the assertions by Texas of ownership and dominion over the marine animal and plant life described in paragraph

XII of this Complaint threaten citizens of Alabama with license fees and excise taxes which are greatly in excess of those required to be paid by citizens of Texas and with the total denial of the privilege of gathering such marine animal and plant life referred to in paragraph **XII** in the entire area described in paragraph **XII**.

XXV

The State of Louisiana has asserted, and is continuing to assert, that its territorial boundaries include the high seas off the coast of Louisiana extending seaward into the Gulf of Mexico twenty-seven nautical miles from the ordinary low water mark along that portion of the coast of Louisiana which is in direct contact with the open sea and from the seaward limit of inland waters. In consequence, the claims of Louisiana (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) described in the following paragraphs **XXVI** and **XXVII** of this Complaint relate not only to the natural resources described in those paragraphs which are found within three nautical miles seaward into the Gulf of Mexico from the ordinary low water mark along that portion of the coast of Louisiana which is in direct contact with the open sea and from the seaward limit of inland waters, but also the natural resources found on the high seas in the area between three to nine miles seaward into the Gulf of Mexico from such a line.

XXVI

The State of Louisiana has asserted, and is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) continuing to assert ownership of, full dominion and power over, and the exclusive jurisdiction and control over the land, minerals and other natu-

ral resources of the subsoil and seabed described in paragraph XIII of this Complaint, contrary to the decision and judgment of this Court in *United States v. Louisiana*, 339 U.S. 699, and the decision of this Court in *United States v. California*, 332 U.S. 19. As part of these assertions the State of Louisiana has made enactments and regulations with respect to such natural resources and has negotiated and executed, and continues to negotiate and execute, numerous leases and licenses with various persons and corporations authorizing them to enter upon the area described in paragraph XIII of this Complaint and take petroleum, gas, mineral deposits and other natural resources of the subsoil described in paragraph XIII of this Complaint. The State of Louisiana has received and is receiving large sums of money from these leases and licenses, which sums of money have been applied and are being applied for the exclusive benefit of the State of Louisiana and the citizens thereof, thereby unlawfully attempting to deprive the complainant and its citizens of their equitable interest in the rights and revenues described in paragraph XIII of this Complaint and held by the United States for the benefit of all the states and citizens of the United States, including the complainant, the State of Alabama, and the citizens thereof. The State of Louisiana will continue to engage in the course of conduct described in this paragraph unless prevented from doing so by this Court.

XXVII

The State of Louisiana is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) asserting ownership, full dominion and power over, and the exclusive jurisdiction and control over the fish,

shrimp, crabs, lobsters and other marine animal and plant life described in paragraph XV. of this Complaint, and is requiring citizens of Alabama, under pain and risk of severe criminal penalties, to pay license fees and excise taxes for the privilege long enjoyed and exercised to use, maintain, develop, enjoy, catch, trap and gather such marine animal and plant life in the area in the Gulf of Mexico which is between three and nine nautical miles seaward from the ordinary low water mark along that portion of the coast of Louisiana which is in direct contact with the open sea and from the seaward limit of inland waters, an area which is part of the high sea. Moreover, the assertions by Louisiana of ownership and dominion over the marine animal and plant life described in paragraph XV of this Complaint threaten citizens of Alabama with license fees and excise taxes which are greatly in excess of those required to be paid by citizens of Louisiana and with the total denial of the privilege of gathering such marine animal and plant life referred to in paragraph XV in the entire area described in paragraph XV.

XXVIII

The State of Florida has asserted, and is continuing to assert, that its territorial boundaries include the high sea off the coast of Florida extending seaward into the Gul. of Mexico nine nautical miles from the ordinary low water mark along that portion of the coast of Florida which is in direct contact with the open sea and from the seaward limit of inland waters. In consequence, the claims of Florida (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) described in the following paragraphs XXIX and XXX of this Complaint relate not only to the natural resources de-

scribed in those paragraphs which are found within three nautical miles seaward into the Gulf of Mexico from the ordinary low water mark along that portion of the coast of Florida which is in direct contact with the open sea and from the seaward limit of inland waters, but also the natural resources found on the high seas in the area between three to nine miles seaward into the Gulf of Mexico from such a line.

XXIX

The State of Florida has asserted, and is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) continuing to assert ownership of, full dominion and power over, and the exclusive right to jurisdiction and control over the land, minerals and other natural resources of subsoil and seabed described in paragraph XIV of this Complaint, contrary to the decisions of this Court in *United States v. California*, 332 U.S. 19; *United States v. Texas*, 339 U.S. 707; and *United States v. Louisiana*, 339 U.S. 680. As part of these assertions the State of Florida has made enactments and regulations with respect to such natural resources, has claimed the right to negotiate and execute, and now claims the right to negotiate and execute leases and licenses with various persons and corporations authorizing them to enter upon the area described in paragraph XVI of this Complaint and take petroleum, gas, mineral deposits and other natural resources of the subsoil described in paragraph XVI of this Complaint. The State of Florida plans and proposes to apply the sums of money received from such leases and licenses for the exclusive benefit of the State of Florida and the citizens thereof, thereby unlawfully depriving the complainant and its citizens of their equitable inter-

est in the rights and revenues described in paragraph XVI of this Complaint and held by the United States for the benefit of all the states and citizens of the United States, including the complainant, the State of Alabama, and the citizens thereof. The State of Florida will continue to engage in the course of conduct described in this paragraph unless prevented from doing so by this Court.

XXX

The State of Florida is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) asserting ownership, full dominion and power over, and the exclusive jurisdiction and control over the fish, shrimp, crabs, lobsters and other marine animal and plant life described in paragraph XVIII of this Complaint, and is requiring citizens of Alabama, under pain and risk of severe criminal penalties, to pay license fees and excise taxes for the privilege long enjoyed and exercised to use, maintain, develop, enjoy, catch, trap and gather such marine and animal plant life in the area in the Gulf of Mexico which is between three and nine nautical miles seaward from the ordinary low water mark along that portion of the coast of Florida which is in direct contact with the open sea and from the seaward limit of inland waters, an area which is part of the high seas. Moreover, the assertions by Florida of ownership and dominion over the marine animal and plant life described in paragraph XVIII of this Complaint threaten citizens of Alabama with license fees and excise taxes which are greatly in excess of those required to be paid by citizens of Florida and with the total denial of the privilege of gathering such marine animal and plant life referred to in paragraph

XVIII in the entire area described in paragraph
XVIII.

XXXI

As a result of the paramount rights, full dominion and power, and exclusive jurisdiction and control of the United States over the lands, minerals and other natural resources described in paragraphs IX, X and XIII of this Complaint and as a result of the decision and orders of this Court in *United States v. California*, 332 U.S. 19; *United States v. Louisiana*, 339 U.S. 699; and *United States v. Texas*, 339 U.S. 707 and actions taken pursuant to these decisions and orders, the defendant California holds impounded for the benefit of the United States and the defendants Humphrey, McKay, Anderson and Priest hold, or have under their direction and control, monies heretofore paid as rents, royalties, or otherwise in connection with leases and licenses with various persons and corporations under which such persons and corporations have entered upon the areas described in paragraphs IX, X and XIII of this Complaint and have taken the natural resources described in paragraphs IX, X and XIII of this Complaint. The sum of money involved is in excess of \$62,000,000. The defendants California, Humphrey, McKay, Anderson and Priest hold such monies, and are required by law to exercise the direction and control which they have over such monies, as trustees for all the states and citizens of the United States, including the State of Alabama and the citizens thereof, and not for the special and exclusive benefit of the defendant States of California, Texas and Louisiana, to the exclusion of Alabama and the citizens thereof, as well as to the exclusion of the other states of the United States and the citizens thereof.

XXXII

The defendants Humphrey, McKay, Anderson and Priest, acting under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65, will, if not restrained by this Court, pay the monies referred to in paragraph XXXI of this Complaint to the defendants California, Texas and Louisiana, or exercise their direction and control over such monies for the exclusive benefit of the defendants California, Louisiana and Texas, thereby unlawfully depriving the complainant, the State of Alabama, and its citizens of their proportionate and equitable interest in these monies.

XXXIII

The defendants Humphrey, McKay, Anderson and Priest, acting under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65, will, if not restrained by this Court, acquiesce in the assertions of the defendants California, Texas, Louisiana and Florida set forth in paragraphs XXI, XXII, XXVI and XXIX of this Complaint, and will fail to assert the interest of the United States set forth in paragraphs IX, X, XIII and XVI of this Complaint, thereby depriving the State of Alabama and the citizens thereof of their proportionate equitable interest in the natural resources described in paragraphs IX, X, XIII and XVI of this Complaint and the revenues derived therefrom.

XXXIV

The State of Alabama sues, inter alia, in its sovereign capacity as a state admitted to the United States on an equal footing with the defendant states and the other states of the Union, asserting sovereign rights equal to and of the same extent and magnitude as those

of the defendant states, to rectify the status of inferior sovereignty of Alabama vis-a-vis the defendant states to which action taken or proposed to be taken by the defendant states under color of Public Law 31, 83d Cong., 1st Sess., has or would relegate it, and, in particular, to establish that:

A) The State of Alabama and the defendant states have identical interests in the lands and natural resources described in paragraphs IX, X, XIII and XVI by virtue of the Acts of Congress which admitted the States of Alabama, California, Louisiana, Texas and Florida to the Union on an equal footing with the original states and, consequently, with each other, as well as by virtue of the guaranty contained in Article IV, Sec. 3, Cl. 1 of the Constitution of the United States. The defendant states have no greater interest than the State of Alabama in these lands and natural resources, and no interest whatever beyond that which they enjoy as sovereign states in the Union in national property rights held in trust by the United States as trustee for all the states and citizens thereof. The sovereignty of the State of Alabama is equal to and of the same extent and magnitude as that of the defendant states, and the same property interests must accrue to Alabama and the original states as accrue to any of the defendant states. The result of the action described in paragraphs XXI through XXXIII of this Complaint would be to deprive the State of Alabama of equal status with the defendant states in vital attributes of sovereignty, and hence would be to deprive the State of Alabama of the equal sovereignty vis-a-vis the defendant states to which the Constitution and the Act of Congress admitting Alabama to the Union entitle it. This injury would be irreparable and hence a situation

exists which necessitates the exercise of the equity powers of this Court.

B) The State of Alabama is entitled, by virtue of the Acts admitting it and the defendant States of Texas, Louisiana and Florida to the Union, as well as by virtue of the guaranty contained in Article IV, Sec. 3, Cl. 1 of the Constitution of the United States, to be treated on an equal footing vis-a-vis these defendant states with respect to action by the United States determining the width of the belt of territorial waters off the shores of Alabama and these defendant states. In like manner, the defendant States Texas, Louisiana and Florida are obligated to respect Alabama's right to equal treatment in this regard, as part of their obligation to respect the terms and conditions under which these defendant states and the State of Alabama entered the Union. Determinations made by the Government of the United States have settled and established that the permissible width of this belt of territorial waters is three nautical miles. The actions and proposed actions of the defendant States Texas, Louisiana and Florida in attempting to extend their boundaries to include a territorial belt of nine nautical miles in width in the manner described in paragraphs XXII, XXV and XXVIII of this Complaint deprive the State of Alabama of equal sovereignty with these defendant states. This injury would be irreparable and hence a situation exists which necessitates the exercise of the equity powers of this Court.

XXXV

The State of Alabama sues "in its capacity as quasi-sovereign and *parens patriae* for the citizens of Alabama for whom the rights with respect to the land and

natural resources described in paragraphs IX, X, XIII and XVI of this Complaint and the funds described in paragraph XXXI of this Complaint are held in trust by virtue of the United States Constitution including Article IV, Section 3, clauses 1 and 2 thereof. Citizens of Alabama would have their economic and social welfare and development curtailed or halted as a result of action taken or proposed to be taken by the defendants under color of Public Law 31, 83d Cong., 1st Sess., c. 65, which would deprive the citizens of Alabama of their constitutional rights to share in the resources and funds described in paragraphs IX, X, XIII, XVI and XXXI of this Complaint. This injury would be irreparable and hence a situation exists which necessitates the exercise of the equity powers of this Court.

XXXVI

The State of Alabama sues in its capacity as quasi-sovereign and *parens patriae* for its citizens whose economic well being will be irreparably injured by the denial or threatened denial by the defendant States Texas, Louisiana and Florida of the non-exclusive privilege long enjoyed to use, maintain, develop, enjoy, catch, trap and gather the fish, shrimp, crabs, lobsters and other marine animal and plant life referred to in paragraphs XII, XV and XVIII of this Complaint. The action and proposed action of the defendant States Texas, Louisiana and Florida described in paragraphs XXIV, XXVII and XXX of this Complaint will deprive the citizens of Alabama of their valuable rights and privileges and do irreparable injury to the fishing industry in Alabama. A situation therefore exists which necessitates the exercise of the equity powers of this Court.

XXXVII

The terms of Public Law 31, 83d Cong., 1st Sess., c. 65 do not authorize the claims of the defendant States Texas, Louisiana and Florida to a belt of territorial waters nine nautical miles in width described in paragraphs XXII, XXV and XXVIII of this Complaint. The boundaries which these defendant states now claim as described in paragraphs XXII, XXV and XXVIII of this Complaint did not exist at the times each such defendant state became a member of the Union. Furthermore, these claims of the defendant states have not been approved by the Congress of the United States at any time subsequent to their admission to the Union and prior to the passage of Public Law 31, 83d Cong., 1st Sess., c. 65. Furthermore, Public Law 31, 83d Cong., 1st Sess., c. 65, should not be construed so as to authorize the other claims, assertions and actions of any of the defendant states described in this Complaint.

XXXVIII

If construed so as to authorize the claims, assertions and actions set forth and described in this Complaint, Public Law 31, 83d Cong., 1st Sess., c. 65, is unconstitutional, null and void for the following reasons:

1. Public Law 31, 83d Cong., 1st Sess., c. 65, involves an unlawful abdication by the Government of the United States and an unlawful delegation to the defendant states of certain essential and non-delegable elements of national sovereignty which this Court in *United States v. California*, 332 U.S. 19; *United States v. Louisiana*, 339 U.S. 699; *United States v. Texas*, 339 U.S. 707, held adhere under the Constitution to the

Government of the United States and the Government of the United States alone. Public Law 31, 83d Cong., 1st Sess., c. 65, therefore does not constitute an ordinary disposition of property belonging to the United States within the meaning of Article IV, Section 3, clause 2 of the Constitution.

2. Public Law 31, 83d Cong., 1st Sess., c. 65, purports to transfer to the defendants the States of California, Texas, Louisiana and Florida rights over resources to which the United States has paramount rights and dominion as an essential attribute of national sovereignty and which the United States is required by the Constitution to hold in trust for the people of the whole nation.

3. Public Law 31, 83d Cong., 1st Sess., c. 65, attempts an unconstitutional delegation to certain states of the power of Congress under Article IV, Section 3, clause 2 of the Constitution to dispose of and make all needful rules and regulations respecting property belonging to the United States, and attempts an unconstitutional abdication of the constitutional role of the United States to exercise the power granted under Article IV, Section 3, clause 2 of the Constitution for the benefit of all the people of the United States.

4. The State of Alabama has an interest in the lands and resources covered by Public Law 31, 83d Cong., 1st Sess., c. 65, identical with that of the defendants the State of California, the State of Louisiana, the State of Texas, and the State of Florida. Public Law 31, 83d Cong., 1st Sess., c. 65, which purports to convey and alienate irrevocably these natural resources to these four states alone is, therefore, contrary to the terms on

which the States of Alabama, California, Louisiana, Texas and Florida were admitted to the Union pursuant to Article IV, Section 3, clause 1 of the Constitution and is therefore contrary to this Article and is contrary to the constitutional bond both required by and formed under authority of, this Article.

5. Public Law 31, 83d Cong., 1st Sess., c. 65, is contrary to Article IV, Section 3, clause 1 of the Constitution and action taken thereunder which guarantees that all states admitted to the Union shall be and remain equal in power, dignity and authority. If interpreted in a manner consistent with the claims and actions of the defendant States of Texas, Louisiana and Florida, and the claims and actions of the defendants Humphrey, McKay, Anderson and Priest, Public Law 31, 83d Cong., 1st Sess., c. 65, purports to give to these three states, alone of all the states in the Union, the right to extend their boundaries three marine leagues from their shores.

6. Public Law 31, 83d Cong., 1st Sess., c. 65, attempts an unconstitutional abdication or delegation by Congress of its power to control, in a sovereign and national capacity, the natural resources described in this Complaint for the purpose of providing for the common defense of the United States under Article I, Section 8 of the Constitution.

7. Public Law 31, 83d Cong., 1st Sess., c. 65, and action taken or proposed to be taken under it, attempt an infringement of the privileges and immunities of the citizens of Alabama in violation of Article IV, Section 2 of the Constitution of the United States and the Fourteenth Amendment to the Constitution of the

United States, and attempts to deny the citizens of Alabama the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE your complainant prays that:

1. Public Law 31, 83d Cong., 1st Sess., c. 65, be decreed to be unconstitutional, void and of no effect.

2. Public Law 31, 83d Cong., 1st Sess., c. 65, be declared to give to the defendant states no rights to, or power, authority, or dominion over, any lands, natural resources or marine animal or plant life which was, prior to the enactment of such law, vested by the Constitution in the United States to be exercised for the benefit of all the states and citizens of the United States, and that to the extent that such law is construed to give any such right, power, authority or dominion to the defendant states it be declared to be unconstitutional, void and of no effect.

3. Public Law 31, 83d Cong., 1st Sess., c. 65, be declared to give the defendant States Texas, Louisiana and Florida no right to, or power, authority or dominion over the maritime belt lying seaward between three and nine nautical miles from the ordinary low water mark along that portion of their coasts which is in direct contact with the open sea and from the seaward limit of inland waters along their coasts, and that to the extent that such law is construed to give any such right, power, authority or dominion to these defendant states it be declared to be unconstitutional, void and of no effect.

4. The defendants Humphrey, McKay, Anderson and Priest and each of them be permanently enjoined

from making any payments of funds referred to in paragraphs XXXI and XXXII now under their control, and the defendants the State of California, the State of Louisiana, the State of Texas and the State of Florida be enjoined and ordered to make restitution of any payments which may already have been made.

5. The defendants the State of California, the State of Louisiana, the State of Texas and the State of Florida be permanently enjoined and restrained from attempting to assert ownership of, full dominion and power over and the exclusive jurisdiction and control over the land, minerals and other natural resources of the subsoil and seabed described in paragraphs IX, X, XIII and XVI of this Complaint in the manner described in paragraphs XXI, XXIII, XXVI and XXIX of this Complaint.

6. The defendants Humphrey, McKay, Anderson and Priest be permanently enjoined and restrained from acquiescing in the assertions of the defendants the States of California, Texas, Louisiana and Florida described in paragraphs XXI, XXIII, XXVI and XXIX of this Complaint in the manner described in paragraph XXXIII of this Complaint.

7. The defendants the States of Texas, Louisiana and Florida be permanently enjoined and restrained from asserting ownership, full dominion and power over, and the exclusive jurisdiction and control over the marine, animal and plant life described in paragraphs XII, XV and XVIII of this Complaint, and that the assertions, enactments, regulations, licensing measures of these defendant states described in paragraphs XXIV, XXVII and XXX of this Complaint be decreed to be unconstitutional, void and of no effect.

8. The defendants the States of Texas, Louisiana and Florida be permanently enjoined and restrained from attempting to assert jurisdiction on the high seas as described in paragraphs XXII, XXV and XXVIII of this Complaint and that the action taken by these defendant states in such assertions of jurisdiction be decreed to be unconstitutional, void and of no effect.

9. The State of Alabama recover its costs herein expended and be granted such other relief as this Court may deem just and equitable.

Respectfully submitted,

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September 26, 1953.

CERTIFICATE OF SERVICE

I, M. Roland Nachman, Jr., certify that I have served a copy of the foregoing motion for leave to file complaint, and the attached complaint, and the brief in support thereof, on the following named individuals by mailing a copy of same to them, postage prepaid, to the following addresses:

The Honorable Allen Shivers
Governor
State Capitol
Austin, Texas

The Honorable John Ben
Shepperd
Attorney General
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Austin, Texas

The Honorable Robert F.
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The Honorable Fred S. LeBlanc
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The Honorable Dan McCarty
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The Honorable Earl Warren
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The Honorable George M.
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The Honorable Douglas McKay
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The Honorable Robert B.
Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

The Honorable Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

The Honorable Herbert
Brownell, Jr.
Attorney General
Department of Justice
Washington, D. C.

Done on this the 26th day of September, 1953.

M. ROLAND NACHMAN, JR.
Assistant Attorney General of Alabama
Of Counsel for Complainant

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SUPREME COURT, U.S.

No. , Original

Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ALABAMA, Complainant,

v.

**STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY;
DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER
PRIEST, Defendants.**

**BRIEF IN SUPPORT OF MOTION
FOR LEAVE TO FILE COMPLAINT
AND COMPLAINT**

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INDEX

	Page
Jurisdiction	1
Questions presented	2
Statutes and constitutional provisions involved	3
Statement	5
Summary of argument	11
Argument	17
I. The State of Alabama has standing to sue	17
A. Alabama has standing as a sovereign state	17
1. The sovereign interests of Alabama are adversely affected by the territorial claims of the defendants Texas, Louisiana and Florida	17
2. The sovereign interests of Alabama are adversely affected by the claims of all defendant states in the lands and other natural resources covered by this suit	24
B. Alabama has standing as quasi-sovereign and <i>parens patriae</i>	26
II. Public Law 31 is not a valid exercise of the power of Congress to dispose of public lands of the United States	40
III. Public Law 31 is invalid as denying the State of Alabama rights guaranteed it by its admission to the Union on an equal footing with the other states	57
Conclusion	75
Appendix A. Public Law 31, 83d Cong., 1st Sess., c. 65	77
Appendix B. Relevant portions of the Acts of Congress admitting the States of Alabama, Louisiana, Florida, Texas and California to the Union	83
Appendix C. Legislative acts setting forth boundary claims of Texas and Louisiana and constitutional provisions setting forth boundary claim of Florida	85

CITATIONS

Cases:

<i>Alabama v. Georgia</i> , 23 How. 505 (1859)	23
<i>Ashwander v. Tennessee Valley Authority</i> , 297 U.S. 288 (1936)	51
<i>Butte City Water Co. v. Baker</i> , 196 U.S. 119 (1905)	51
<i>Camfield v. United States</i> , 167 U.S. 518 (1897)	49
<i>Carmichael v. Southern Coal & Coke Co.</i> , 301 U.S. 495 (1937)	44, 50
<i>Causey v. United States</i> , 240 U.S. 399 (1916)	49
<i>Citizens Saving & Loan Ass'n v. Topeka</i> , 20 Wall. 655 (1874)	50

<i>Cole v. La Grange</i> , 113 U.S. 1 (1885)	50
<i>Colorado v. Kansas</i> , 320 U.S. 383 (1943)	23
<i>Connecticut v. Massachusetts</i> , 282 U.S. 660 (1931)	23
<i>Cook v. United States</i> , 288 U.S. 102 (1933)	71
<i>Coyle v. Smith</i> , 221 U.S. 559 (1911)	17, 58
<i>Cunard SS Co. v. Mellon</i> , 262 U.S. 100 (1923)	65
<i>Everson v. Board of Education</i> , 330 U.S. 1 (1947)	50
<i>Federal Power Commission v. Idaho Power Co.</i> , 344 U.S. 17 (1952)	49
<i>Florida v. Georgia</i> , 17 How. 478 (1854)	23
<i>Florida v. Mellon</i> , 273 U.S. 12 (1927)	40
<i>Georgia v. Pennsylvania Railroad</i> , 324 U.S. 439 (1945)	13, 28, 29, 38
<i>Georgia v. Tennessee Cooper Co.</i> , 206 U.S. 230 (1907)	28
<i>Georgia R. Co. v. Redwine</i> , 342 U.S. 299 (1952)	74
<i>Hans v. Louisiana</i> , 134 U.S. 1 (1890) }	20
<i>Helvering v. Davis</i> , 301 U.S. 619 (1937)	14, 44, 50
<i>Hopkins Savings Association v. Cleary</i> , 296 U.S. 315 (1935) ..	13, 39, 40
<i>Illinois Central R. Co. v. Illinois</i> , 146 U.S. 387 (1892)	14, 44, 46
<i>Kansas v. Colorado</i> , 185 U.S. 125 (1902)	17, 27
<i>Kansas v. Colorado</i> , 206 U.S. 46 (1907)	19, 23, 34
<i>Larson v. Domestic and Foreign Corp.</i> , 337 U.S. 682 (1949) ..	73, 74
<i>Levy v. United States</i> , 177 U.S. 621 (1900)	56
<i>Light v. United States</i> , 220 U.S. 523 (1911)	49
<i>Louisiana v. Mississippi</i> , 202 U.S. 1 (1906)	64
<i>Louisiana v. Mississippi</i> , 282 U.S. 458 (1931)	23
<i>Manchester v. Massachusetts</i> , 139 U.S. 240 (1891)	64
<i>Massachusetts v. Mellon</i> , 262 U.S. 447 (1923)	13, 34, 35, 36, 37
<i>Missouri v. Holland</i> , 252 U.S. 416 (1920)	39
<i>Missouri v. Illinois</i> , 180 U.S. 208 (1901)	18, 28
<i>Missouri v. Illinois</i> , 200 U.S. 496 (1906)	19
<i>Missouri v. Iowa</i> , 7 How. 660 (1849)	23
<i>Missouri v. Kentucky</i> , 11 Wall. 395 (1870)	23
<i>Mormon Church v. United States</i> , 136 U.S. 1 (1890)	51
<i>Nebraska v. Wyoming</i> , 325 U.S. 589 (1945)	23
<i>New Jersey v. New York</i> , 5 Pet. 284 (1830)	23
<i>New York v. New Jersey</i> , 256 U.S. 296 (1921)	28
<i>North Dakota v. Minnesota</i> , 263 U.S. 365 (1923)	23
<i>Pennsylvania v. West Virginia</i> , 262 U.S. 553 (1923) ..	13, 28, 30
<i>Philadelphia Co. v. Stimson</i> , 223 U.S. 605 (1912)	73
<i>Pollard's Lessee v. Hagan</i> , 3 How. 212 (1845)	52, 60
<i>Rhode Island v. Massachusetts</i> , 12 Pet. 657 (1838)	23
<i>Shriotes v. Florida</i> , 313 U.S. 69 (1941)	17, 59, 67

Index Continued

iii

	Page
<i>Smith v. Allwright</i> , 321 U.S. 649 (1944)	63
<i>Stearns v. Minnesota</i> , 179 U.S. 223 (1900)	24
<i>Sweatt v. Painter</i> , 339 U.S. 629 (1950)	63
<i>Terry v. Adams</i> , 345 U.S. 461 (1953)	63
<i>Texas v. Florida</i> , 306 U.S. 398 (1939)	25, 26
<i>Texas v. White</i> , 7 Wall. 700 (1868)	59
<i>Thompson v. Consolidated Gas Co.</i> , 300 U.S. 55 (1937)	50
<i>Toomer v. Witsell</i> , 334 U.S. 385 (1948)	15, 64, 67
<i>United Kingdom v. Norway</i> , 1951 I.C.J. Reports 116	21, 24
<i>United States v. Beebe</i> , 127 U.S. 338 (1888)	49
<i>United States v. California</i> , 332 U.S. 19 (1947)	5, 6, 7, 13, 14, 23, 31, 37, 40, 41, 42, 47, 52, 62, 65, 70
<i>United States v. Curtiss-Wright Corp.</i> , 299 U.S. 304 (1936) ..	41
<i>United States ex rel. Chapman v. Federal Power Commission</i> , 345 U.S. 153 (1953)	33
<i>United States v. Gratiot</i> , 14 Pet. 526 (1840)	49
<i>United States v. Kahriger</i> , 345 U.S. 22 (1953)	54
<i>United States v. Louisiana</i> , 339 U.S. 699 (1950)	5, 6, 7, 13, 14, 40, 52, 62
<i>United States v. Michigan</i> , 190 U.S. 379 (1903)	57
<i>United States v. Oregon</i> , 295 U.S. 1 (1935)	60
<i>United States v. San Francisco</i> , 310 U.S. 16 (1940)	48, 49
<i>United States v. Texas</i> , 339 U.S. 707 (1950)	5, 6, 7, 13, 14, 15, 17, 24, 40, 42, 52, 60, 61, 62, 66
<i>United States v. Trinidad Coal Co.</i> , 137 U.S. 160 (1890)	49
<i>United States ex rel. Chapman v. Federal Power Commission</i> , 345 U.S. 153 (1953)	33
<i>Virginia v. West Virginia</i> , 11 Wall. 39 (1870)	23
<i>Wisconsin v. Illinois</i> , 278 U.S. 367 (1929)	23
<i>Withers v. Buckley</i> , 20 How. 84 (1857)	58
<i>Wyoming v. Colorado</i> , 259 U.S. 419 (1922)	23

Constitutional Provisions, Statutes and Treaties:

Article I, Section 8, Constitution	67
Article III, Section 1, Constitution	17, 20
Article III, Section 2, Clauses 1 and 2, Constitution	1, 17, 20
Article IV, Section 2, Constitution	4, 14
Article IV, Section 3, Constitution	3, 14, 17, 42, 50, 58
Section 1, Fourteenth Amendment, Constitution	4
Act of March 2, 1819, c. 47, 3 Stat. 489	4, 58
Act of April 8, 1812, c. 50, 2 Stat. 701	4, 58

Act of March 3, 1845, c. 48, 5 Stat. 742	4, 58
Act of September 9, 1850, c. 50, 9 Stat. 452	4, 58
Joint Resolution No. 8 of March 1, 1845, 5 Stat. 797	4, 58
Title 28 United States Code, Section 1251	1, 17
Rev. Stat. Sec. 2289 et seq., 43 U.S.C.A., Secs. 161, et seq.	56
20 Stat. 89, 43 U.S.C.A., Secs. 311, et seq.	56
19 Stat. 377, 43 U.S.C.A., Secs. 321, et seq.	56
28 Stat. 422, 43 U.S.C.A., Secs. 641, et seq.	56
Rev. Stat. 2479, 43 U.S.C.A., Sec. 982	56
Treaty Series No. 685, 43 Stat. 1761	16, 71
Treaty Series No. 694, 43 Stat. 1815	16, 71
Treaty Series No. 707, 43 Stat. 1875	16, 71
Treaty Series No. 712, 44 Stat. 2013	16, 71
Treaty Series No. 738, 44 Stat. 2395	16, 71
Treaty Series No. 817, 46 Stat. 2446	16, 71
Act of May 16, 1941, L. Texas, 47th Leg., p. 454, as amended by Act of May 23, 1947, L. Texas, 50th Leg., p. 451; Vernon's Ann. Civ. Stat. Art. 5415a	4, 69
Vernon's Tex. Stat., 1950 Supp., 51st Leg., Art. 9346-1	5
6 Dart. La. Gen. Stat., (1939) Secs. 9311.1-9311.4, 49 La. Rev. Stat. 1950, Secs. 1 and 2	4, 69
Title 56, La. Rev. Stat. (1950), Secs. 352, 376-8, 496, 500, 555 ..	5
FLA. CONST. ART. I, 1868	5, 69
Fla. Stat. 1951 Secs. 373.10, 373.25, 373.13, 374.30	5

Miscellaneous:

99 Cong. Rec. 2863	53
99 Cong. Rec. 2938	53
99 Cong. Rec. 2939	54
99 Cong. Rec. 4134	53
99 Cong. Rec. 4266	22
Report No. 133 of Senate Committee on Interior and Insular Affairs to Accompany S. J. Res. 13, 83d Cong., 1st Sess., March 27, 1953, page 8	52
163 Parl. Deb. (1923) Commons, Col. 2578	22
Report of Special Master, United States v. California, No. 6 original, Oct. Term, 1952	66
Trail Smelter case, III Reports of Arbitral Awards 1905, 1964 ..	28
1 Hackworth, Digest of International Law, 639-41	21
Hughes, 18 Am. J. Int'l L. 229, 230	65
1 Restatement, Trusts Sec. 187(g)(h) (1935)	46
2 Elliott on Railroads, 3rd Ed., Sec. 965, p. 376 (1921)	56
2 Scott, Trusts Sec. 187 (1939)	46

Supreme Court of the United States

OCTOBER TERM, 1953

No. , Original

STATE OF ALABAMA, *Complainant*,

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST, *Defendants*.

2

BRIEF FOR COMPLAINANT

JURISDICTION

This is an action by the State of Alabama against the State of Texas, the State of Louisiana, the State of Florida, the State of California, and George M. Humphrey, a citizen of the State of Ohio, Douglas McKay, a citizen of the State of Oregon, Robert B. Anderson, a citizen of the State of Texas, and Ivy Baker Priest, a citizen of the State of Utah. It is proposed to be instituted in this Court under authority of Article III, Section 2, Clauses 1 and 2 of the Constitution of the United States and Title 28, United States Code, Section 1251.

QUESTIONS PRESENTED

1. Is Public Law 31, 83d Cong., 1st Sess., c. 65, which purports to authorize the assertions by the defendant states of ownership, dominion and power and exclusive jurisdiction and control of the lands, minerals, marine animal and plant life and other natural resources lying seaward of the ordinary low water mark off their coasts and outside of inland waters, a valid exercise of the trust upon which the United States holds its interest in these lands and resources under the Constitution?

2. Is Public Law 31, 83d Cong., 1st Sess., c. 65, which purports to authorize the transfer, relinquishment and donation to the defendant states of a fund of money consisting of royalties for the development of mineral resources in the area described in Question One which accrued after this Court had held that the mineral resources were subject to the paramount jurisdiction and control of the United States and that the defendant states had no property interest in them, a valid exercise of the trust upon which the United States holds this fund under the Constitution?

3. Is Public Law 31, 83d Cong., 1st Sess., c. 65, which purports to authorize the assertions by the defendant states of ownership, dominion and power and exclusive jurisdiction and control of the lands, minerals, marine animal and plant life and other natural resources in the area described in Question One a violation of the constitutional guaranty to Alabama to be treated on an equal footing with the defendant states?

4. Should Public Law 31, 83d Cong., 1st Sess., c. 65, be construed to authorize the assertions of Texas,

Louisiana and Florida that their territories include a belt of territorial waters off their shores nine nautical miles in width, in view of the rule of international law growing out of the long-standing position of the United States that the permissible width of the belt of territorial waters is three nautical miles?

5. If Public Law 31, 83d Cong., 1st Sess., c. 65, is construed as authorizing the territorial assertions set out in Question Four and to authorize the assertions by Texas, Louisiana and Florida of ownership, dominion and power, and exclusive jurisdiction and control of the lands, minerals, marine animal and plant life and other natural resources in this area, does it violate the constitutional guaranty to Alabama to be treated on an equal footing with these three defendant states?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Public Law 31, 83d Cong., 1st Sess., c. 65, the Submerged Lands Act, hereinafter referred to as Public Law 31, is set out in full in Appendix A to this brief, pp. 77-83, *infra*.

Article IV, Section 3, of the Constitution of the United States provides as follows:

"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

"The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any

Claims of the United States, or of any particular State."

Article IV, Section 2, Clause 1 of the Constitution of the United States provides as follows:

"The Citizens of each State shall be entitled to all the Privileges and Immunities of Citizens in the Several States."

Section 1 of the Fourteenth Amendment to the Constitution of the United States contains the following provision:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The relevant portions of the Acts of Congress admitting Alabama to the Union (Act of March 2, 1819, c. 47, 3 Stat. 489), and those admitting Louisiana (Act of April 8, 1812, c. 50, 2 Stat. 701), Florida (Act of March 3, 1845, c. 48, 5 Stat. 742), California (Act of Sept. 9, 1850, c. 50, 9 Stat. 452), and the Joint Resolution admitting Texas (Joint Resolution No. 8 of March 1, 1845, 5 Stat. 797) are set forth in Appendix B to this brief, pp. 83-85, *infra*.

The legislative acts setting forth the boundary claims of Texas (Act of May 16, 1941, L. Texas, 47th Leg., p. 454, as amended by Act of May 23, 1947, L. Texas 50th Leg., p. 451, Vernon's Ann. Civ. Stat. Art. 5415a) and Louisiana (6 Dart. La. Gen. Stat. [1939], Secs. 9311.1-9311.4, 49 La. Rev. Stat. [1950], Secs. 1 and 2)

and the constitutional provision setting forth the boundary claims of Florida (FLA. CONST. ART. I, 1868) are set forth in Appendix C to this brief, pp. 85-88, *infra*.

Compilations of the statutes by which Texas, Louisiana and Florida purport to regulate fishing within their territorial boundaries are found in Article 934b-1, Vernon's Texas Statutes, 1950 Supplement, 51st Leg.; Title 56, La. Rev. Stat. (1950) Secs. 352, 376-78, 496, 500 and 555; Fla. Stat. 1951 Secs. 373.10, 373.25, 373.13 and 374.30.

STATEMENT

This is an action by the State of Alabama against the States of Texas, Louisiana, Florida and California, and against the following individuals: George M. Humphrey acting under color of authority as Secretary of the Treasury, Douglas McKay, acting under color of authority as Secretary of the Interior, Robert B. Anderson, acting under color of authority as Secretary of the Navy, and Ivy Baker Priest, acting under color of authority as Treasurer of the United States.

The purpose of this suit is twofold: first, to protect the interests of Alabama and its citizens in the natural resources of the waters and submerged lands off the coasts of the United States, and to prevent irreparable damage to these interests resulting from the unlawful expropriation of these resources. The interests of Alabama and its citizens are the consequence of the Federal dominion of these lands and resources, recently delineated by this Court in *United States v. California*, 332 U.S. 19 (1947), *United States v. Louisiana*, 339 U.S. 699 (1950), and *United States v. Texas*, 339 U.S. 707 (1950).

This suit is also for the purpose of protecting, both on its own behalf and on behalf of its citizens, the right of Alabama to be treated on an equal footing with the defendant states with respect to the bounties conferred upon them by Public Law 31, both as that law may attempt to extend the maritime boundaries of certain of the defendant states and as that law attempts to grant valuable lands and natural resources to the defendant states without conferring similar benefits on Alabama.

The facts, as set forth in the Complaint, are as follows: In *United States v. California*, 332 U.S. 19 (1947), this Court held that the submerged lands and natural resources lying seaward of the ordinary low water mark (or seaward limit of inland waters) off the coast of California were not the property of California, but were subject to the paramount jurisdiction and control of the Federal Government. This decision held that the Federal Government had the right to license the development of these natural resources. Thus the Federal Government became obligated to apply the royalties for the benefit of all the States and citizens of the United States, a holding, of course, that included Alabama and the citizens thereof. In *United States v. Louisiana*, 339 U.S. 699 (1950), and *United States v. Texas*, 339 U.S. 707 (1950), there were similar decisions as to the submerged lands and natural resources off the coasts of Louisiana and Texas, respectively. These decisions made it clear that the holding in *United States v. California* applied to all the coastal areas off the shores of the United States and that the United States, and not the coastal states, had the right to license the development of natural resources off the coastline of the United States lying seaward of the normal low water mark or from the sea-

ward boundary of inland waters. According to these decisions natural resources estimated to have a value of at least fifty billions of dollars are under the control and paramount jurisdiction of the Federal Government. The Federal Government was obligated to use the funds obtained from the development of these resources for the benefit of all the United States, including Alabama and its citizens.

Prior to these decisions the defendant States of California, Texas and Louisiana had unlawfully entered upon these submerged lands and had unlawfully asserted the right to license the development of these resources and to apply the royalties to the exclusive benefit of their own citizens. After decisions of the Court in the *California*, *Louisiana* and *Texas* cases, leases issued by these states were continued in effect but the royalties derived from them were either impounded or held in escrow. As a result, a fund of over \$62,000,000 was accumulated in which the Federal Government, acting as trustee for all the United States, has the legal interest and in which the defendant states have no beneficial interest other than that which they share in common with all the other states of the Union.

On May 22, 1953, the Congress enacted Public Law 31. This law purports to declare that the coastal states, and not the Federal Government, own and have the right to develop the subsoil and the natural resources of the submerged lands seaward of the ordinary low water mark off their coasts or the seaward limit of inland waters. This law also attempts to release to the coastal states (with certain exceptions) all right, title or interest in the subsoil and natural resources in these areas and to include in these natural resources

fish and other marine animal and plant life. The law also purports to direct the individual defendants to pay or release to the defendant States of California, Louisiana and Texas the \$62,000,000 which had accrued as a result of the continued operations under the state licensees.

Alabama citizens have long enjoyed a privilege under the Constitution of fishing in the Gulf of Mexico. Beyond three miles from the shore they are entitled to exercise this privilege without restrictions or prohibitions—including onerous excises—by other states of the Union. In fishing on the high seas they are subject only to regulation and licensing imposed by authority of their own state or their own national government. Moreover, even when fishing within three miles of the shore, they may not be subjected to discriminatory regulation by reason of their Alabama residence, and certainly may not be excluded altogether. As a result of the exercise of these privileges, a fishing industry has developed in Alabama bringing in a gross annual revenue of over \$15,000,000 and providing a livelihood for thousands of Alabama citizens.

Public Law 31, however, purports to define the boundaries of the various coastal states. It does so in a way which limits the boundaries of Alabama to a belt of three geographic miles lying seaward from the ordinary low water mark lying off its coasts or of the seaward limit of its inland waters. The defendants Texas, Louisiana and Florida, however, have interpreted the law in a manner which permits them to claim as within their boundaries a corresponding belt nine nautical miles in width and to claim exclusive ownership and control of the natural resources found within such a belt. The individual defendants, moreover, have indi-

cated their acquiescence in such a claim. As described in more detail below, such action would have an adverse effect upon the fishing industry of Alabama, and would greatly increase the value of the assets held in trust for all the United States which the individual defendants threaten to turn over solely to the defendant states.

The acquiescence by the individual defendants in the "historic claims" of Texas, Louisiana and Florida to a belt of territorial waters nine nautical miles in width is unlawful. None of these three defendant states was entitled to such a territorial belt at the time it entered the Union, and none of these "historic claims" has been recognized by the Congress since their admission. Indeed, it has been the consistent policy of the United States that the permissible width of the belt of territorial waters is three nautical miles. Therefore the assertions of these three defendant states are not justified by the terms of Public Law 31.

With the exception of the portion dealing with the states which are entitled to a three to nine mile belt of territorial waters, Public Law 31, on its face, purports to apply equally to all coastal states. However, in fact, the most valuable natural resources now known to exist in the submerged land areas off the coasts of the United States are located off the coasts of the defendant states. Hence the appearance of uniformity of treatment among the coastal states is unreal; in fact, the four defendant states are the true beneficiaries of Public Law 31 and are put into a quite different and favored category from the other coastal states.

The actions threatened to be taken by the defendant states and by the individual defendants will, unless restrained by this Court, cause irreparable injury to the State of Alabama in the following particulars:

1. Alabama and its citizens will be deprived of their equitable interest in the immensely valuable resources of the marginal seas and the royalties which will accrue from the development of these resources;

2. Alabama and its citizens will be deprived of their equitable interest in the fund of \$62,000,000 now subject to the control of the Federal Government and held by the individual defendants in trust for all the United States, including Alabama and the citizens thereof;

3. Alabama will be reduced to a status of inferior sovereignty with respect to the defendant states because of the granting to these states of immensely valuable property interests which have been held to be an attribute of sovereignty;

4. Alabama will be reduced to a status of inferior sovereignty with respect to the defendant States of Texas, Louisiana and Florida because those states will be permitted to extend their territorial boundaries to include a belt nine nautical miles in width off their coasts and given ownership of the natural resources in such a belt while Alabama is permitted to extend its own territorial boundaries only to include a corresponding belt three nautical miles in width.

5. Alabama and its citizens will be injured because the defendant States of Texas, Louisiana and Florida now have and will put into effect regulations which require Alabama fishermen to pay license fees to these defendant states for the privilege of fishing on the high seas more than

three miles from their shores and because these defendant states will assert the right to discriminate against Alabama fishermen or to exclude them altogether from the entire area nine miles from their shores.

Alabama contends that Public Law 31 as interpreted and applied by the defendants, is unconstitutional for the reasons which are set forth in detail in this brief. Alabama therefore asks for injunctive relief against the action taken and proposed to be taken by the defendants under color of Public Law 31.

SUMMARY OF ARGUMENT

I

THE STATE OF ALABAMA HAS STANDING TO SUE

Alabama is suing both to protect its sovereign interests as a State and as quasi-sovereign and *parens patriae*. As a sovereign Alabama is suing to protect its right to be treated on an equal footing with the defendant states of Texas, Louisiana and Florida with respect to the width of the belt of territorial waters off her shores. By assertions under color of Public Law 31 these defendants have extended and will extend their boundaries into the Gulf of Mexico to nine nautical miles. Thus, Alabama, whose boundaries extend only three nautical miles beyond the low water mark on its coast or beyond the seaward limit of its inland waters, is deprived of equal sovereignty vis-a-vis these defendant states. In deciding controversies between states this Court acts in a role comparable to that of an international body deciding disputes between national states. The present controversy, involv-

ing an attempt to extend jurisdiction to the high seas, falls within a well recognized category of disputes which are subject to judicial settlement.

Moreover, Alabama sues to protect its interest in the natural resources involved in this controversy which are threatened by the action of the defendants. Since the property interest in these resources is an essential attribute of sovereignty, deprivation of an equal interest in these resources is tantamount to denial to Alabama of sovereignty equal to that of the defendant states.

Alabama also sues as quasi-sovereign and *parens-patriae* under doctrines allowing a state to attack the validity of a measure which has an adverse effect upon the economic welfare of a substantial number of its citizens.

The defendants Texas, Louisiana and Florida, unless restrained by the Court, threaten to deny to the citizens of Alabama the privilege of engaging in the fishing industry in the Gulf of Mexico without license or regulation whatsoever beyond the three mile limit and, without discrimination because of their residence within three miles of the shore. These defendant states do not merely attempt to place Alabama fishermen under their jurisdiction, when fishing on the high seas in the Gulf of Mexico, but also assert the right to prevent Alabama fishermen from exercising this privilege by discriminatory regulation. Acting under color of Public Law 31 these defendants assert ownership of the natural resources both within three miles from

their shores and on the high seas, and the consequent right to exclude non-residents altogether.

Furthermore, Alabama asserts beneficial interests in the land and resources and the revenues which have been and are to be derived therefrom.

These lands and resources, worth at least fifty billion dollars, as well as the revenues derived and to be derived from them, must be held in trust for the benefit of all the citizens of the United States, including the citizens of Alabama. The action which the defendants propose to take will deprive Alabama and its citizens of their rightful interest in these lands or resources.

Alabama, asserting sovereign interests of its own, as well as economic and financial interests on its own behalf and on behalf of its citizens, does not run afoul of *Massachusetts v. Mellon*, 262 U.S. 447 (1923). Alabama does not ask a decision upon abstract questions of political power but the adjudication of a specific controversy in which it has a definite interest. Moreover, the decisions of this Court in *Hopkins Savings Association v. Cleary*, 296 U.S. 315 (1935); *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923); and *Georgia v. Pennsylvania Railroad*, 324 U.S. 439 (1945) leave no doubt as to Alabama's standing to sue.

II

PUBLIC LAW 31 IS NOT A VALID EXERCISE OF THE POWER OF CONGRESS TO DISPOSE OF PUBLIC LANDS OF THE UNITED STATES

The decisions of this Court in *United States v. California*, 332 U.S. 19 (1947); *United States v. Louisiana*, 339 U.S. 699 (1950), and *United States v. Texas*, 339 U.S. 707 (1950), established that the submerged lands

and natural resources involved in this proceeding do not belong and have never belonged to the defendant states. This Court has held that the United States has the paramount right and dominion over these lands and resources. Under Article IV, Section 3, Clause 2 of the Constitution any action taken by the United States in connection with these resources must be taken by the United States in its capacity as trustee for all the people of the United States.

Congress must therefore exercise its judgment as a trustee. This is similar to the requirement that federal spending must be for the general welfare. *Helvering v. Davis*, 301 U.S. 619 (1937). In a similar case involving state disposition of state-owned property this Court held invalid a transfer of state-owned property to a private corporation as a perversion of the trust under which the property was held for the benefit of all the people of the state. *Illinois Central R. Co. v. Illinois*, 146 U.S. 387 (1892).

Public Law 31 cannot be defended as a valid exercise of a trust. It makes national assets valued at, at least fifty billion dollars available solely to four states to the detriment of the other forty-four. An analysis of the legislative history as well as the circumstances which surrounded its passage makes it clear that the Congress did not exercise its judgment as a trustee for all the people of the United States. It merely expressed its opinion that the Court had improperly interpreted the Constitution in the *California*, *Louisiana* and *Texas* cases.

III

**PUBLIC LAW 31 DENIES THE STATE OF ALABAMA RIGHTS
GUARANTEED IT BY ITS ADMISSION TO THE UNION ON
AN EQUAL FOOTING WITH THE OTHER STATES**

The State of Alabama has a right to be treated on an equal footing with the defendant states both by virtue of the Act admitting Alabama to the Union and the guarantee of the Constitution. This guarantee extends to all elements of sovereignty including those property rights which have been held to be essential attributes of sovereignty. *United States v. Texas*, 339 U.S. 707 (1950).

Public Law 31 violates the equal footing clause, first, because it was designed to give to the defendant states those property rights in the submerged lands which are the attributes of sovereignty, while appearing to give similar rights to the other coastal states without actually doing so. This does not constitute equal treatment, since the known valuable property interests are in the submerged lands off the coasts of the defendant states. Second, Public Law 31 as applied violates the equal footing clause by permitting three of the defendant states to extend their borders to include a territorial belt off their coasts nine nautical miles in width while, limiting Alabama to a belt three nautical miles in width. As a result of this unequal treatment Alabama citizens will be deprived of the right freely to fish on the high seas between three and nine miles off the coasts of these three defendant states. These defendant states assert the right to exclude Alabama fishermen entirely from this area, as well as from the area within three miles from their coasts in violation of the rule laid down in *Toomer v. Witsell*, 334 U.S. 385 (1948).

Moreover, Public Law 31 does not authorize the extension of the territorial boundaries of the defendants Texas, Louisiana and Florida to include the belt within nine miles from their shores. Under the statutory test, the defendant states must either have been entitled to such a belt of territorial waters at the time they entered the Union, or their claim to such a belt must have been approved by the Congress prior to the enactment of Public Law 31 on May 22, 1953. The three defendant states, Texas, Louisiana and Florida, were not entitled to such a belt at the time they entered the Union. Their claims have never been approved by the Congress.

Public Law 31 must be applied in light of the treaty commitments of the United States to Great Britain, Germany, The Netherlands, Panama, Cuba and Japan to support the principle that three miles is the proper width of the belt of territorial waters. These commitments are still outstanding and one of them, that to Japan, was reassumed as recently as July 22, 1953.

IV

THE SUIT AGAINST THE INDIVIDUAL DEFENDANTS DOES NOT CONSTITUTE A SUIT AGAINST THE UNITED STATES

It is well established that a public official may be enjoined from attempting to enforce a statute which is unconstitutional, or from acting in excess of his statutory authority. In neither case is the action of the public official the act of the sovereign.

ARGUMENT

I

THE STATE OF ALABAMA HAS STANDING TO SUE

Alabama invokes the original jurisdiction of this Court, pursuant to Article III, Sections 1 and 2, of the Constitution and Title 28, United States Code, Section 1251, in a dual capacity: First, as a sovereign, Alabama asserts a controversy over sovereign rights of the sort formerly settled between independent states, but now made justiciable by the Constitution. (*Kansas v. Colorado*, 185 U.S. 125, 141 (1902)) Second, as a quasi-sovereign or *parens patriae* for its citizens, Alabama asserts rights and privileges, guaranteed by the Constitution, and destroyed or threatened by defendants acting under color of Public Law 31.

A. ALABAMA HAS STANDING AS A SOVEREIGN STATE

1. THE SOVEREIGN INTERESTS OF ALABAMA ARE ADVERSELY AFFECTED BY THE TERRITORIAL CLAIMS OF THE DEFENDANTS TEXAS, LOUISIANA AND FLORIDA

Alabama and the defendant states were admitted to the Union on an equal footing with the original states and hence with each other. See *United States v. Texas*, 339 U.S. 707, 716-718 (1950). This assurance of equal footing exists as a matter of constitutional and statutory guarantee, since implicit in congressional power to admit new states to the Union (Art. IV, Sec. 3, Cl. 1) is the requirement that the states come in on an equal footing with the other states and remain so. *Coyle v. Smith*, 221 U.S. 559, 567 (1911); *Skiriotes v. Florida*, 313 U.S. 69, 77 (1941).

The boundaries of Alabama extend only three nautical miles beyond mean low water on its coast or be-

yond the seaward limit of its inland waters. By assertions under color of Public Law 31, however, the defendants Florida, Texas and Louisiana have extended and will extend their boundaries into the Gulf of Mexico to three marine leagues (nine nautical miles) in the manner described in paragraphs XXII, XXV and XXVIII of the Complaint. If permitted to stand unchallenged, these actions would deprive Alabama of equal sovereignty vis-a-vis these defendant states. Alabama, therefore, has standing to question action which purports to demean its sovereignty by extending the sovereignty of these three states more than three nautical miles beyond their coasts or the seaward limit of inland waters.

In asserting the sovereign right to be treated on an equal footing with the defendant States of Texas, Louisiana and Florida with respect to the width of the belt of territorial waters in the Gulf of Mexico, Alabama is raising an issue which, under a long line of rulings of this Court, is justiciable in the constitutional sense. The cases discussed below indicate that this Court has given great weight to the intent of the framers of the Constitution that this Court, rather than Congress, be the forum for the settlement of disputes between the states.

Indeed, this Court has often recognized that in deciding controversies between two or more states it is acting in a role comparable to that of an international body deciding disputes between national states. Thus in *Missouri v. Illinois*, 180 U.S. 208 (1901) a case which involved the claimed pollution of the Mississippi river under the authority of the State of Illinois, the Court upheld the standing of Missouri to maintain the suit by the following observation: (180 U.S. at 241)

"If Missouri were an independent and sovereign State all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy and that remedy, we think, is found in the constitutional provisions we are considering."

Alabama does not contend that all matters which would be proper subjects for diplomatic negotiation by the states, if they were independent states, are appro-

¹ Mr. Justice Holmes gave a similar rationale of the original jurisdiction of the Court when the Court considered a later phase of the same controversy in *Missouri v. Illinois*, 200 U.S. 496, 518 (1906):

"The only question presented was whether as between the States of the Union this court was competent to deal with a situation which, if it arose between independent sovereignties, might lead to war. Whatever differences of opinion there might be upon matters of detail, the jurisdiction and authority of this court to deal with such a case as that is not open to doubt."

Later in the opinion Mr. Justice Holmes drew an analogy between the dispute between states over the alleged pollution of an interstate river such as the Mississippi to the disputes between the nations which would arise over the pollution of an international river such as the Danube. See 200 U.S. at 520.

In *Kansas v. Colorado*, 206 U.S. 46 (1907), a case involving the alleged diversion by Colorado of the waters of the Arkansas river, the Court upheld its competence to deal with the matter with the following statement: (206 U.S. at 97)

"Nor is our jurisdiction ousted, even if, because Kansas and Colorado are States sovereign and independent in local matters, the relations between them depend in any respect upon principles of international law. International law is no alien in this tribunal."

private matters for submission to this Court under Article III. Obviously, a variety of matters which would be proper subjects of diplomatic negotiation are not appropriate for judicial determination. In considering whether a state has the requisite *interest* to bring a suit against another state, however, this Court has not applied the same criteria which it applies to a suit brought by a private individual.² The Court has rather looked to see whether the complaining state has the type of interest which, if the states had not joined the Union, would be the subject of diplomatic negotiations, international adjudication or even war. Of course, the Court has insisted that the dispute be a substantial one. In this connection, the economic interests of a state and its inhabitants are relied on, not as establishing the standing of the state to sue, but as demonstrating the serious nature of the controversy. Finally, the Court has required that the matter in issue between the states be one susceptible of judicial determination.

The case at hand satisfies all three criteria. First, there is no question but that if Alabama, Texas, Louisiana, and Florida were independent nations, and not states of the Union, Alabama would be entitled to enter a protest and carry on diplomatic negotiations concerning the attempts of the States of Texas, Louisiana and Florida to extend their boundaries nine miles into the Gulf of Mexico. This would be true even though, as in the present case, Alabama was not asserting its

² As this Court stated in *Hans v. Louisiana*, 134 U.S. 1, 15 (1890): "Some things, undoubtedly, were made justiciable which were not known as such at the common law; such, for example, as controversies between States as to boundary lines, and other questions admitting of judicial solution. . . ."

own sovereignty in these areas, but was asserting that the areas were part of the high seas and should remain free from assertions of sovereignty on the part of Texas, Louisiana and Florida.

The United States, for example, has consistently made diplomatic protests of this nature to Mexico, because of Mexico's attempts to extend her boundaries nine nautical miles into the Gulf of Mexico. Hackworth, *Digest of International Law*, 639-41. In these protests the United States did not assert its own sovereignty in these areas but asserted that the areas in question were part of the high seas and should remain free from assertions of sovereignty on the part of Mexico. As recently as 1951, the International Court of Justice did not question the right of the United Kingdom to urge that Norway was attempting to include within its boundaries what was part of the high seas. *Fisheries Case, (United Kingdom v. Norway)* 1951 I.C.J. Reports 116, 126.

Alabama as a member of the Union, has surrendered the right to enter into diplomatic negotiations with Texas, Louisiana and Florida, concerning their assertions of sovereignty in the Gulf. In return, Alabama has obtained the standing to complain in this Court that such assertions are contrary to the law of the land.

Secondly, the dispute is unquestionably a serious one. Mr. Justice Holmes, in his analysis of the bases of jurisdiction in *Kansas v. Colorado, supra*, cited the pollution of an international stream as an example of the type of dispute which would be serious enough to cause an international dispute so that the Supreme Court would take jurisdiction over such a dispute when it arose between states. An examination of diplomatic history shows that international disputes over the per-

missible limits of territorial waters have been of equally grave international concern. In 1923 for example, Great Britain felt so strongly that the claim of the U.S.S.R. to a belt of twelve miles was not justified, that the Admiralty instructed a British warship to prevent interference with British vessels more than three miles distant from the coast of the U.S.S.R., using force if necessary. 163 Parl. Deb. (1923) Commons, Col. 2578. Similarly, a reading of the recent note sent by the United States Government to the U.S.S.R., rejecting the latter's claim to a belt of territorial waters twelve miles wide, leaves no doubt but that this is a controversy just as serious as any controversy over the pollution of a river. See Vol. 99 Cong. Rec. 4266.

The interest of the State of Alabama is a substantial one. This interest is dealt with in detail in the portion of this brief dealing with Alabama's interest as quasi-sovereign and *parens patriae*. For present purposes it is enough to point out that the natural resources in the area from three to nine nautical miles off the coasts of Texas, Louisiana and Florida in the Gulf of Mexico are rich. Many Alabama citizens obtain their livelihood from the development of these resources. For example, the seafood resources of the Gulf of Mexico support an industry on which thousands of Alabama citizens are wholly or partially dependent for their livelihood. Alabama has a clear interest in seeing that these resources are free to its citizens. This interest is not diminished by virtue of the fact that in this aspect of the case, Alabama is not trying to establish for itself a property right in the area in question. For example, this Court has allowed states to present disputes concerning their boundaries—holding the controversies

justiciable against contention that the issue seemingly related to political questions of sovereignty.³ Suits by one state against another to prevent diversion of the flow of an interstate stream from the complaining state have been entertained.⁴ Similarly, this Court decided whether action of one state had unlawfully caused an overflow of waters into another.⁵ In these water diversion cases, this Court has said:

"The present claimants being States, we think the clash of interests to be of that character and dignity, which makes the controversy a justiciable one under our original jurisdiction."

In none of these cases did this Court predicate its holding of standing to sue on a showing of a property right in the complainant.

Third, there is no question but that the breadth of the territorial waters is a question susceptible of judicial determination. For example, in *United States v. California*, 332 U.S. 19 (1947) this Court has referred to a Master the method of determining the seaward boundaries off the coast of California. The International Court of Justice has treated as a justiciable ques-

³ See, e.g., *Virginia v. West Virginia*, 12 Wall. 39 (1870); *New Jersey v. New York*, 5 Pet. 234 (1830); *Rhode Island v. Massachusetts*, 12 Pet. 657 (1839); *Missouri v. Iowa*, 7 How. 680 (1849); *Florida v. Georgia*, 17 How. 478 (1854); *Alabama v. Georgia*, 23 How. 505 (1859); *Missouri v. Kentucky*, 11 Wall. 395 (1870); *Louisiana v. Mississippi*, 282 U.S. 450 (1931).

⁴ *Kansas v. Colorado*, 205 U.S. 46 (1907); *Colorado v. Kansas*, 320 U.S. 383 (1943); *Connecticut v. Massachusetts*, 282 U.S. 680 (1931); *Wyoming v. Colorado*, 259 U.S. 419 (1922); *Wisconsin v. Illinois*, 278 U.S. 367 (1929).

⁵ *North Dakota v. Minnesota*, 263 U.S. 365 (1923).

⁶ *Nebraska v. Wyoming*, 325 U.S. 589, 610 (1945).

tion the claims of the United Kingdom that Norway was, by legislation, unlawfully attempting to include part of the high seas within its boundaries. *Fisheries Case, United Kingdom v. Norway, supra*.

2. THE SOVEREIGN INTERESTS OF ALABAMA ARE ADVERSELY AFFECTED BY THE CLAIMS OF ALL DEFENDANT STATES IN THE LANDS AND OTHER NATURAL RESOURCES COVERED BY THIS SUIT.

Alabama asserts a sovereign interest, constitutionally protected, to be treated on an equal footing with the defendant states, with respect to the revenues and other benefits to be obtained from the development of the off-shore natural resources involved in this suit.

This Court, in *United States v. Texas*, 339 U.S. 707 (1960), held that the rights to the subsoil involved in this suit, and the natural resources therein, while in the nature of property rights, were so subordinated to sovereignty as to follow sovereignty. In the words of the Court: (339 U.S. at 719)

“(A)lthough *dominium* and *imperium* are normally separable and separate, this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty.”

Moreover, in the Texas case the Court stated that the equal footing clause was designed “to create parity as respects political standing and sovereignty” (339 U.S. at 716) and went on to hold that the equal footing clause applies to the very interests in off shore oil and other natural resources which are in controversy in this proceeding. See also *Stearns v. Minnesota*, 179 U.S. 223, 245 (1900).

This decision establishes two salient points. First, under the equal footing clause Alabama has a constitu-

tionally guaranteed right to be treated on a parity with the defendant states with respect to the assets involved in this proceeding. Second, Alabama has this right as a *sovereign right and interest*, over and above any right and interest which it may have, either as a beneficiary of a trust under which the federal government holds property for the benefit of all the United States, and over and above any interest which it asserts as quasi-sovereign or as *parens patriae* for the benefit of its citizens.

The action which the defendants are proposing to take, under color of Public Law 31, is to transfer to the defendant states Texas, Louisiana, Florida and California, the *sole* interest in these natural resources. The effect of such action would be to deny to the state of Alabama its sovereign right to be on an equal footing with defendant states with respect to these assets, estimated to be worth at least fifty billion dollars. This transfer of sovereign rights is retroactive; it looks to the past as well as the future. For example, it is proposed to release or transfer to the States of California, Texas and Louisiana over \$62,000,000 derived from rents and royalties which accrued after the ruling of this Court that the United States was entitled to them as an essential portion of its sovereignty.

The threatened denial of equal sovereignty to Alabama is not remote or speculative. It is real and pressing. It is more direct and immediate than similar situations in which this Court has held that standing to sue existed. For example, in *Texas v. Florida*, 306 U.S. 398 (1939) this Court assumed original jurisdiction to resolve conflicting claims concerning a decedent's domicile and claims of shares in the decedent's estate for

state death tax purposes. An assumption essential to Texas standing was:

"... the existence of solid danger that the highest courts of four states will ascertain this fact (i.e., domicile) in four different ways. Texas has no standing here except on the basis that three state courts will despoil her of her rights by leaving no assets in the estate out of which to satisfy her claim."¹ (parenthesis supplied)

A showing of injury to Alabama requires no such extensive factual assumption. The allegations in the Complaint, and the supporting evidence which will be introduced by leave of this Court, leave no doubt that Alabama has more than an academic interest in the constitutionality of Public Law 31. The right which it seeks to vindicate—the sovereign right to be treated on an equal footing with respect to lands and natural resources worth at least fifty billion dollars—is real and immensely valuable. Moreover Alabama's concern does not arise from mere uncertainty as to the future course of action which the defendants might take. By their past assertions and public utterances the defendants have made it perfectly clear that they will exploit the lands and resources involved in this proceeding for the sole and exclusive benefit of the defendant States of California, Texas, Louisiana and Florida and to the detriment of Alabama.

B. ALABAMA HAS STANDING AS QUASI-SOVEREIGN AND PARENS PATRIAE

Alabama sues also as quasi-sovereign and *parens patriae* for its citizens. Alabama asserts equitable and

¹ Texas v. Florida, 306 U.S. 398, 431 (1939), (dissenting opinion of Frankfurter, J.)

beneficial interests in the lands and resources and the revenues therefrom in the submerged lands off the shores of defendant states described in paragraphs IX, X, XIII and XVI of the Complaint, and in a portion of the fund of over \$62,000,000 now in the hands of the individual defendants. Alabama also asserts on behalf of a substantial number of its citizens the non-exclusive privilege to fish in the submerged lands within three miles off the shores of the defendants Texas, Louisiana and Florida and on the high seas off the shores of those states as described in paragraphs XII, XV and XVII of the Complaint.

The right of a state to maintain a suit in this Court as "quasi-sovereign" and "*parens patriae*" even though the state itself has no proprietary interest in the rights sought to be protected, has been recognized in a long series of decisions of this Court. In large part on this ground a line of cases has held that a state has standing to question the legality of a diversion of water in an interstate stream which flows through its boundaries.* Similarly a state has been held to have standing to object to the pollution of an interstate stream

* See cases cited in footnotes 4 and 5, page 23, *supra*. The following quotation from the opinion in *Kansas v. Colorado*, 185 U.S. 125, 142 (1902), is enlightening as to the theory on which the Court has supported the standing of the states to sue in these cases:

"(T)he mere fact that a State had no pecuniary interest in the controversy, would not defeat the original jurisdiction of this court, which might be invoked by the State as *parens patriae*, trustee, guardian or representative of all or a considerable portion of its citizens; and . . . the threatened pollution of the waters of a river flowing between States, under authority of one of them, thereby putting the health and comfort of the citizens of the other in jeopardy, presented a cause of action justiciable under the Constitution."

which flows through its boundaries.* A state has been permitted to invoke the original jurisdiction of this Court to enjoin a manufacturer in a neighboring state from discharging noxious gases over its territory; the complaining state sued in a quasi-sovereign capacity to protect its air from pollution and to safeguard its forests and mountains.¹⁰

The right of a state to sue in this Court as *parens patriae* was also upheld in *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923). In that case Pennsylvania sued to enjoin the enforcement of a West Virginia conservation statute which threatened to cut off the supply of natural gas flowing from West Virginia fields to Pennsylvania. Injury to the health and comfort of citizen users and to industrial users was alleged. This Court found that Pennsylvania had standing, not only as a proprietor of public institutions which used the gas, but "as the representative of the consuming public whose supply will be similarly affected." (262 U.S. 553, 591.) Where matters of health, comfort and welfare are concerned, the state "as the representative of the public, has an interest apart from that of the individuals affected." (262 U.S. 553, 592.)

The doctrines set forth in *Pennsylvania v. West Virginia* have recently been applied by this Court in *Georgia v. Pennsylvania Railroad*, 324 U.S. 439 (1945). In that case Georgia was permitted to bring an original suit to enforce the civil remedies of the anti-trust laws on an allegation that the economy of Georgia and the

* *Missouri v. Illinois*, 180 U.S. 208 (1901); *New York v. New Jersey*, 256 U.S. 296 (1921).

¹⁰ *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907); cf. *Trail Smelter case* (arbitration between United States and Canada) III Reports of Arbitral Awards 1905, 1964.

welfare of her citizens had suffered serious injury from a conspiracy of the defendant railroad companies. The Court upheld the right of Georgia to maintain such a suit as *parens patriae*. Indeed, Georgia's allegation of injury to a state-owned railroad were described as a mere "makeweight". See 324 U.S. at 450. The Court held that an adequate ground to support Georgia's standing was that Georgia, as *parens patriae*, had the right to question the legality of any action which threatened to injure the economy of the state. In speaking of this right the Court said: (324 U.S. at 451)

"(D)iscriminatory rates fastened on a region have a more permanent and insidious quality. Georgia as a representative of the public is complaining of a wrong, which if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States . . . Georgia's interest is not remote; it is immediate. If we denied Georgia as *parens patriae* the right to invoke the original jurisdiction of the Court in a matter of that gravity, we would whittle the concept of justiciability down to the stature of minor or conventional controversies. There is no warrant for such a restriction."

From an analysis of these cases it is possible to draw certain conclusions which are applicable to the case at bar. First, it is not necessary that the acts complained of occur within the complaining state. The complaining state need only show that the act complained of have an effect within it.

Second, the complaining state is not required to assert a property interest which is adversely affected by the act complained of. The complaining state need

sovereignty, in trust for the public. . . . The trust with which they are held, therefore, is governmental and cannot be alienated, . . .

"This follows necessarily from the public character of the property, being held by the whole people for purposes in which the whole people are interested."

The considerations which the Court indicated were applicable in the *Illinois Central* case, are equally applicable to the property owned by the Federal Government. They are equally applicable to the case at bar. They make it clear that while the Court will not ordinarily review the wisdom of particular action taken by Congress in exercising its trust, it will look to see whether Congress exercised its judgment as a trustee or whether it was acting on the basis of other considerations.

The rationale of the Court in the *Illinois Central* case points up the strong similarity between the test applied in that case and other cases involving public lands, and the test applied by courts in the administration of private trusts. There a court will not normally interfere with the exercise by a trustee of a discretionary power. It will, however, interpose when the trustee has either acted for a reason other than that of furthering the purposes of the trust or has failed to exercise the judgment—judgment as a trustee—required by the discretionary power. In short, even though the discretion of the trustee may be broad, it must appear that the trustee has exercised the type of judgment required by the trust and maintained his fiduciary relationship to all the beneficiaries.

¹⁰ 1 Restatement, Trusts Sec. 187(g)(h) (1935); 2 Scott, Trusts Sec. 187 (1939).

An attempt will doubtless be made to support Public Law 31, not on the grounds that it was in fact a valid exercise of a public trust by the Congress, but on the grounds that this Court is powerless to inquire whether it was or not. Proponents of Public Law 31 will doubtless attempt to draw support from a statement of Mr. Justice Black in the *California* case, in which he said: (332 U.S. at 27)

"We have said that the constitutional power of Congress in this respect is without limitation. *U.S. v. San Francisco*. . . . Thus neither the courts nor the executive agencies could proceed contrary to an Act of Congress in this congressional area of national power."

The context of this statement is important. California had contended that the Attorney General was without power to maintain the suit against it because Congress, without articulation, had manifested a policy that the states, and not the Federal Government, have legal title to the lands involved. This Court stated that Congress could limit the power of the Attorney General to prosecute claims for the Government but had not done so, and it is in this connection that the statement was made. The most that can be distilled from this statement in context is a recognition that the Congress, through legislation or through control over appropriations, can exert control over the executive branch of the Government, including that part of the executive branch charged with the conduct of litigation, in a manner which this Court should respect.

Furthermore, in this portion of the Court's opinion, the holding was merely that the Congress had not limited the power of the Attorney General to bring legal proceedings on behalf of the Government. In view of the emphasis which the Court's opinion placed on the fact that the Government of the United States holds its interests in trust for all the people of the United States,¹⁹ this opinion can not be relied upon to support the claim that the Federal Government's power to dispose of property is either without constitutional limitation or beyond the power of this Court to review.

It is also true that this Court, in *United States v. San Francisco*, 310 U.S. 16 (1940), stated that the power of Congress over public lands is without limitation, and after indicating that the Government held public lands in trust for all the people, quoted with approval a statement that: "And it is not for the courts to say how that trust shall be administered." See 310 U.S. at 29. Here again the context was radically different from that of the present case. That case involved an Act of Congress which had granted to the City of San Francisco certain lands and rights of way to enable the city to construct and maintain a reservoir for water and power purposes. The Act contained a provision that the city should itself distribute the power produced at the reservoir, rather than distribute it through a privately owned utility. This was the provision, attacked as unconstitutional by the city, which was the subject of the Court's remarks. It will be noted that the purpose of this provision was to ensure the most widespread possible benefits from the use of public property.

¹⁹ See quotation on page 43, *supra*.

This observation is equally applicable to the other cases which are usually cited for the general proposition that the Court will not inquire as to how Congress administers its trust with respect to public lands. All of them involve situations in which Congress imposed conditions on the disposition of public lands which were calculated by Congress to obtain the widest public benefits from the use of the land. In these cases the grantee, although willing to take the land, was objecting to the conditions, often on the asserted ground that the conditions invaded the reserved powers of the states, often on the asserted ground that the condition would not have the results which Congress wished to produce. The Court has universally rejected these arguments, and it is in this context that it has made statements such as those quoted in *United States v. San Francisco*.²⁰ In all of these cases, moreover, the Court has reiterated that the United States holds public lands as a trustee for the whole country.²¹

The argument that the power of Congress to dispose of Federal property is beyond judicial review is an argument which would make of the "property clause"

²⁰ *United States v. Gratiot*, 14 Pet. 526 (1840), (United States has power to lease mineral lands rather than sell); *Light v. United States*, 220 U.S. 523 (1911), (United States, in making public lands available for pasturage had authority to require compliance with conservation regulations which prohibited acts permitted under state law); *Federal Power Commission v. Idaho Power Co.*, 344 U.S. 17 (1952), (Federal Power Commission can require power company to carry government power as a condition of construction of a dam and power lines over public lands).

²¹ This principle has also been set out in *United States v. Beebe*, 127 U.S. 338, 342 (1888); *United States v. Trinidad Coal Co.*, 137 U.S. 160, 170 (1890); *Camfield v. United States*, 167 U.S. 518, 524 (1897); *Causey v. United States*, 240 U.S. 399, 402 (1916).

of the Constitution a reservoir of power far exceeding grants of power in other sections of the Constitution. If such an argument were accepted, Congress could use Federal property without limitation for any purpose, however unrelated to the spirit of the Constitution and the ordinary and proper function of government. Such a view would be inconsistent with the basic principles which this Court has applied in interpreting the Constitution. For example, this Court has held that Congress may not exercise its spending power without limitation. On the contrary, this Court has made it clear that the Congress may spend only for the general welfare. *Helvering v. Davis*, 301 U.S. 619 (1937). In the words of this Court: (301 U.S. at 640)

“The line must still be drawn between one welfare and another, between particular and general.”

Similarly, this Court has held that states and their subdivisions may not exercise their power of taxation for a private purpose but only for a public one.²² The Court has imposed a similar limitation upon the power of the States to take property even where an adequate provision is made for compensation.²³

The principles of these decisions apply equally when Congress is disposing of public property. First, this Court has made it quite clear that the congressional exercise of power under the property clause (Article IV, Section 3, Clause 2 of the Constitution) is subject to review. For example, this Court has indicated that

²² See *Citizens Saving & Loan Ass'n v. Topeka*, 20 Wall, 655 (1874); *Cole v. La Grange*, 113 U.S. 1 (1885); *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937); *Everson v. Board of Education*, 330 U.S. 1 (1947).

²³ *Thompson v. Consolidated Gas Co.*, 300 U.S. 55 (1937).

there are constitutional objections to the Congress making excessive delegations concerning the terms and conditions on which property is disposed.²⁴ Similarly, this Court has indicated that the Congress, in legislating under the same clause with respect to the territories, is subject to "fundamental limitations in favor of personal rights."²⁵ Finally, this Court has indicated that in reviewing the disposal of Federal property under this clause, it will require that the disposal of property meet at least the same test of public purpose as that required by the cases dealing with spending, state taxation and state condemnation described above. In the case of *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936), the Court undertook to review the constitutionality of a disposition of property under this clause. Chief Justice Hughes stated the criteria which were being applied in this review in the following terms: (297 U.S. at 338)

"The constitutional provision is silent as to the method of disposing of property belonging to the United States. That method, of course, must be an appropriate means of disposition according to the nature of the property, *it must be one adopted in the public interest as distinguished from private or personal ends*, and we may assume that it must be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States." (Emphasis supplied.)

It is now appropriate to examine the consideration which lay behind the enactment of Public Law 31, in order to determine whether Congress exercised a judg-

²⁴ *Butte City Water Co. v. Baker*, 196 U.S. 119 (1905).

²⁵ *Mormon Church v. United States*, 136 U.S. 1 (1890).

ment consonant with the terms of the trust. Such an examination fails to show that the proponents of the bill urged, or the Congress considered, whether the disposition of the resources which it involved was for the benefit of all the people. The principal basis for the legislation seems to be the thought that this Court's decisions were wrong and denied to the defendant states property which was rightfully theirs. Congress simply undertook to overrule the decisions of this Court in the *California*, *Louisiana* and *Texas* cases.

It is useful to examine some of the legislative history of Public Law 31. For example, the Report of the Senate Committee which recommended the passage of what became Public Law 31, set forth its purpose quite clearly. After setting forth the holding of this Court in *Pollard, Lessee v. Hagan*, 3 How. 212 (1845), (without indicating that that decision related only to inland waters), it then indicated that the rule in this case had been the law applied by this Court prior to the decision in the *California* case. It then stated:

"The purpose of this legislation is to write the law for the future as the Supreme Court believed it to be in the past—that the States shall own and have proprietary use of all lands under navigable waters within their territorial jurisdiction, whether inland or seaward subject only to the governmental powers delegated to the United States by the Constitution."²⁶

The comments on the floor of the Senate by the chief proponents of the bill were to the same effect. The late Senator Taft, the majority leader at the time, was characteristically frank and direct:

²⁶ Report No. 133 of Senate Committee on Interior and Insular Affairs to Accompany S. J. Res. 13, 83d Cong., 1st Sess., March 27, 1953, page 8.

"(I)t seemed perfectly clear to me at all times that the States were the real owners of these lands, and that the Supreme Court opinions were clearly wrong." (99 Cong. Rec. 4134.)

Senator Holland was equally clear as to the purpose of the bill:

"This decision (i.e. *California*) has resulted in chaos and complete instability, and as a matter of sound public policy must be corrected. This is the only place where it can be properly corrected." (parenthesis supplied.) (Ibid. at 2863.)

Senator Daniel of Texas, one of the chief proponents of the bill, appeared to consider the Congress as a tribunal to which he could appeal rulings of the Supreme Court, not only on substance, but on procedure as well.

"That is the *argument* which is made by the Supreme Court of the United States, and the Senator is agreeing with it, if he wishes to give weight to the equal-footing clause, instead of giving weight to the guarantees made by the Congress of the United States that Texas was to keep all lands within its limits." (emphasis added.) (Ibid. at 2938.)

"This was the first time in the history of the Supreme Court that it refused to hear evidence offered by a State in a contested lawsuit. It was the first time in the history of the Supreme Court that it refused to interpret or apply a solemn contract between the United States and another government." (Ibid.)

"Under these circumstances I have never accepted this Court decision (i.e., *United States v. Texas*) as final. I have felt it my duty to present the matter to the Congress, because the Congress made the agreement with Texas and it has the power to

keep that agreement by restoring our property." (parenthesis supplied.) (Ibid. at 2939.)

Alabama recognizes, of course, that Congress has broad constitutional powers to dispose of public property rights. Alabama realizes that congressional discretion is wide, and that legislative motive and wisdom are not, ordinarily, proper fields for judicial inquiry. Alabama does contend, however, that the power of Congress under the "property" clause is not boundless; that Congress holds public property in trust for all the people of the country, and hence in trust for the citizens of Alabama; that all dispositions of public property must conform to some demonstrable national interest; that Public Law 31 makes no pretense of being in the national interest, but rather, according to its legislative sponsors, is an attempt to benefit the defendant states as such.²⁷

²⁷ The picture given by an analysis of the legislative history of Public Law 31 is supported by the public context in which this legislation was considered. This Court can take notice of the reaction in the various state capitals affected to the decisions of this Court in the California, Louisiana and Texas cases, the widespread political pledges which were made to obtain a nullification of this Court's decision in those cases, and the circulation of a carefully prepared "tabulation", purporting to establish that a total of forty-eight Justices of this Court had voted to support the claims of California, Louisiana and Texas but that only a total of six had voted against those claims. 99 Cong. Rec. 2862-3. The remarks of Mr. Justice Frankfurter in his dissenting opinion in *United States v. Kahriger*, 345 U.S. 22, 38-39 (1953) are apt here:

"What is relevant to judgment here is that, even if the history of this legislation as it went through Congress did not give one the libretto to the song, the context of the circumstances which brought forth this enactment—sensationally exploited disclosures regarding gambling in big cities and small,

But this Court held that these submerged lands and resources did not belong to defendants California, Texas and Louisiana, and that the Federal Government had paramount rights and dominion over them. Their disposition is not a matter concerning these states alone. All states are equally interested.

The courts, under our system of government, are arbiters of property rights, and this Court decided that the lands and resources were in the Federal domain, and not owned by defendants California, Texas and Louisiana. When enacting Public Law 31, Congress asked the sole question—Was the Supreme Court correctly applying the Constitution when it decided against California, Texas and Louisiana. But, it is submitted, the question which, under the Constitution, Congress must consider and answer is—is action which gives immensely valuable submerged lands and resources to the four defendant states—states which, according to the highest Court in the land, have never owned them—action which it should take as trustee for the whole nation? The inevitable negative answer to this latter question must invalidate Public Law 31 as a congressional violation of its public trust.

(Congress has from time to time granted public lands to states and individuals for various purposes. Sometimes the grants were free; sometimes the consideration was small. But always there was a demonstrable public purpose behind the legislative action.

the relation of this gambling to corrupt politics, the impatient public response to these disclosures, the feeling of ineptitude or paralysis on the part of local law-enforcing agencies—emphatically supports what was revealed on the floor of Congress, namely, that what was formally a means of raising revenue for the Federal Government was essentially an effort to check if not to stamp out professional gambling."

Land grants to schools were to further the education of our people, and these grants were spread throughout the country. Grants to railroads were for the purpose of developing the western area of the country—"to build new lines of road, not only between centers of trade, but far out into unsettled portions of the country where the operation of a railroad can prove a profitable business only after settlers have developed the resources of the country."²⁸ The development of the West has clearly enhanced the welfare of the whole nation. Similarly, the Homestead Acts,²⁹ the Timber and Stone Acts,³⁰ the Desert Land Act,³¹ the Carey Act,³² were all part of a legislative design to reward settlement, residence and land improvement in the undeveloped West. The national dividend from this national investment has been immense.

The Swamp Land Acts³³ were legislative declarations of policy that the states should be aided in reclaiming swamp and overflowed lands, unfit for cultivation in their natural state.³⁴

The Federal Government granted land to states for internal improvements such as canals, rivers, and roads. The purpose was not to benefit the states con-

²⁸ 2 Elliott on Railroads, 3rd Ed., Sec. 965, p. 376 (1921).

²⁹ Rev. Stat. Sec. 2289 et seqs, 43 U.S.C.A., Secs. 161, et seq.

³⁰ 20 Stat. 89, 43 U.S.C.A., Secs. 311, et seq.

³¹ 19 Stat. 377, 43 U.S.C.A., Secs. 321, et seq.

³² 28 Stat. 422, 43 U.S.C.A., Secs. 641, et seq.

³³ Rev. Stat. 2479, 43 U.S.C.A., Sec. 982.

³⁴ See *Leovy v. United States*, 177 U.S. 621, 636 (1900): "(T)he public health is deeply concerned in the reclamation of swamp and overflowed lands."

cerned, but to further nationwide travel and commerce.²²

Thus, it is submitted that these examples of congressional grants of Federal property to states or individuals have foundations in demonstrable national purpose and interest. They contrast sharply with the gift of lands and resources to the defendant states contained in Public Law 31—a bare donation with no purpose other than the benefit of the states concerned. Such legislation is not consonant with the constitutional requirement that public property be held in trust for the benefit of all the people. Therefore, it must fall.

III

PUBLIC LAW 31 IS INVALID AS DENYING THE STATE OF ALABAMA RIGHTS GUARANTEED IT BY ITS ADMISSION TO THE UNION ON AN EQUAL FOOTING WITH THE OTHER STATES.

The arguments advanced in this section of the brief fall into two categories. The first is composed of arguments directed to the bill as it applies to the area within three miles from the low water mark of the four defendant states. The second are arguments directed to the bill as it is to be applied in the high seas, that is in the area from three to nine miles off the coasts of Texas, Louisiana and Florida.

The State of Alabama was admitted to the Union in 1819 pursuant to an Act of Congress which provided

²² See *United States v. Michigan*, 190 U.S. 379, 399 (1903):
“(T)he purpose of the United States in granting the land . . . was not for the benefit of the State of Michigan, and the State did not receive any beneficial interest in such lands.”

that the State of Alabama should be admitted into the Union "upon the same footing with the original states, in all respects whatever". 3 Stat. 489. The defendants, the State of California, the State of Louisiana, the State of Texas and the State of Florida were also admitted to the Union under Acts of Congress which contained similar provisions.³⁰ When the State of Alabama and the States of California, Louisiana, Texas and Florida came into the Union in this manner on an equal basis with the original states, they also came into the Union on an equal basis with each other.

The admission of the State of Alabama and the defendant states into the Union on an equal basis with each other is no mere expression of grace by the Congress, which is subject to change by a later Congress. It has the dignity of a constitutional bond between the states. Indeed, the opinions of this Court show that the provisions of these Acts that admission should be on an equal footing are required by the Constitution itself.

This Court has previously considered the power granted by Article IV, Section 3 of the Constitution which provides that "new States may be admitted by the Congress into this Union". It has held that "this Union" referred to in this provision, "is a union of States, equal in power, dignity and authority". *Coyle v. Smith*, 221 U.S. 559, 567 (1911); see also *Withers v. Buckley*, 20 How. 84, 93 (1857). It has consequently held that:

³⁰ California was admitted to the Union by an Act of Congress of September 9, 1850, c. 50 (9 Stat. 452); Louisiana by an Act of Congress of April 8, 1812, c. 50 (2 Stat. 701); Texas by a Joint Resolution of Congress of March 11, 1845, No. 8 (5 Stat. 797); and Florida by an Act of Congress of March 3, 1845, c. 48 (5 Stat. 742).

"(T)he power given to Congress by Sec. 3 of Article IV of the Constitution to admit new States relates only to such States as are equal to each other 'in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself.'" *Skiriotes v. Florida*, 313 U.S. 69, 77 (1941).

When the various states were admitted to the Union, this provision for equal footing became part of the indissoluble relationship which each state assumed toward the national government and the other states. The nature of this relationship has been described by this Court in *Texas v. White*, 7 Wall. 700, 726 (1868):

"When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All of the obligations of perpetual Union, and all the guaranties of republican government in the Union, attached at once to the State. The Act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other States was as complete as perpetual, and as indissoluble as the union between the original States."

The State of Alabama and the defendant states therefore exist as members of a constitutional union, and, under the organic law of this union, they are members on an equal footing with one another. This is a relationship which is beyond the power of Congress to change; and is unaffected by any historic claims which may have existed at the time any partic-

ular state came into the Union." Compare *Pollard's Lessee v. Hagan*, 3 How. 212 (1845), with *United States v. Texas*, 339 U.S. 707 (1950).

It is important to examine the "equal footing" clause in order to determine what sort of things are included within it. The content of the "equal footing" clause has recently been exhaustively analyzed by this Court in *United States v. Texas*, 339 U.S. 707, 716-720 (1950). This Court there pointed out that the "equal footing" clause controlled those property rights which were considered to be attributes of sovereignty. Thus, the Court concluded that under the "equal footing" clause each state had equal property rights in the shore and subsoil of inland navigable waters within its boundaries, subject, of course, to the commerce and navigation powers of the Federal Government. See 339 U.S. at 716. This rule, in fact, was fully articulated in *Pollard's Lessee v. Hagan*, 3 How. 212 (1845), in which the Court held that, under the "equal footing" clause, Alabama obtained the title to the lands underlying Mobile Bay, and indicated that no compact entered into by Alabama at the time of its entrance into the Union could change these rights.

Similarly, in *United States v. Oregon*, 295 U.S. 1, 14 (1935) this Court stated as follows:

"Dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged, in construing either grants by the sovereign of the lands to be held in private

²⁷ Of course, as pointed out below, pp. 68-72, Alabama denies the validity of any "historic claims" to preferential treatment on behalf of the defendant states.

ownership or transfer of sovereignty itself. See *Massachusetts v. New York*, 271 U.S. 65, 89. For that reason, upon the admission of a State to the Union, the title of the United States to lands underlying navigable waters within the States passes to it, as incident to the transfer to the State of local sovereignty, and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce."

Examination of Public Law 31 in the light of these pronouncements will show that the action proposed by the defendants will, unless restrained by this Court, deny equal footing to Alabama in two important respects.

The defendant states, under color of Public Law 31, are attempting to exercise property rights over the subsoil and the natural resources beneath the waters seaward of the low tide mark off their coasts. This Court in *United States v. Texas*, 339 U.S. 707, 719 (1950) held that such property interests were "so subordinated to the rights of sovereignty as to follow sovereignty." Because the sovereign attributes of the other states of the Union did not include property rights in the "marginal sea" area, this Court in the *Texas* case held that no such property rights were in Texas. This Court concluded (339 U.S. 719-20):

"The 'equal footing' clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded; just as it prevents a contraction of sovereignty (*Pollard's Lessee v. Hagan, supra*) which would produce inequality among the States. For equality of States means that they are not 'less or greater, or differ-

ent in dignity or power.' See *Coyle v. Smith*, 221 U.S. 359, 566."

Thus, defendants, under color of Public Law 31, by asserting the property interests in the resources of the marginal sea off their shores, are attempting to extend their sovereignty into these areas. This action, unless restrained by this Court, will constitute an assumption of superior sovereignty vis-a-vis Alabama. If defendants succeed in their attempt to assert property interests in these submerged lands off their shores, advantages which will accrue to the defendants will accrue as a result of superior sovereignty of these defendants, which denies equal footing to Alabama in this important respect. An Act of Congress, not an accident of geology, accomplishes this end: For this Court in the *California, Louisiana and Texas* cases held that these lands and their resources did not accrue to the defendant states within the measure of their sovereignty from the date of their admission to the Union and prior to the passage of Public Law 31.

Nor can it be argued that since Alabama has been granted sovereignty for three geographic miles from its low water mark into the Gulf of Mexico, Alabama's sovereignty has been increased to an equivalent degree. Such an argument ignores facts which were apparent to Congress. Oil, sulphur, and natural gas deposits are known to exist in large quantities *only* in the submerged land areas off the coasts of defendant states particularly defendants California, Texas and Louisiana. So far as is known, no such deposits exist off the shores of the other coastal states, including Alabama. Indeed, this Court in *United States v. California* noted that the controversy there really involved oil. The case at bar is an extension of the same controversy.

It is submitted that Congress may not, consistently with the "equal footing" clause, increase the sovereignty of defendants so as to bring many billion dollars worth of natural resources within their orbit, and increase the sovereignty of Alabama and the other coastal states to an unknown, highly speculative, and relatively worthless degree. Actions attempted by defendants, under color of this legislation, relegate Alabama to a position of unequal sovereignty—inconsistent with the guarantees of the Constitution. Any appearance that Public Law 31 has an equal effect on all the coastal states must vanish, when the facts concerning the nature of the lands and resources off their shores are known. The "equal footing" clause guarantees real and not illusory equality.²⁸

In another particular, however, action proposed to be taken under color of Public Law 31 involves a most flagrant attempt to deny Alabama the equal sovereignty, dignity and power which are guaranteed to it by the "equal footing" clause. As set forth in the Complaint, the States of Texas, Louisiana and Florida, acting under color of Section 2(b) of Public Law 31, are attempting to extend their territorial boundaries at least nine nautical miles into the Gulf of Mexico from the mean low water mark on their coasts or the line marking the seaward limit of inland waters. Even assuming that these three states can make such a claim consistently with the terms of Public Law 31, it must

²⁸ In other contexts, particularly in dealing with questions arising under the Fourteenth and Fifteenth Amendments, the Court has looked through legal forms to satisfy itself whether real equality of treatment existed. See, e.g. *Sweatt v. Painter*, 339 U.S. 629 (1950); *Smith v. Allwright*, 321 U.S. 649 (1944); *Terry v. Adams*, 345 U.S. 461 (1953).

follow that Public Law 31 is unconstitutional, as being contrary to the constitutionally guaranteed terms by which Alabama and these three defendant states were incorporated in the Union.

Width of the belt of territorial waters lying seaward of the ordinary low water mark or the line marking the seaward limit of inland waters involves political rights which are inherent attributes of sovereignty. While the interests of a state in this belt have not been sufficient to justify the assertion by a state of property interests in the resources of the water and the subsoil, the state has been held to have sovereignty in this belt which would justify the application of its police power. *Manchester v. Massachusetts*, 139 U.S. 240 (1891).²⁰ Moreover, the interests of a state in the maritime belt off its shores have been held adequate to justify bringing a boundary dispute in this Court against a state which made inconsistent claims to a portion of the same belt. *Louisiana v. Mississippi*, 202 U.S. 1 (1906).

When Alabama was admitted to the Union in 1819, the position of the Government of the United States was that the maritime belt off the shores of the United States was to be three nautical miles in width. This position had been taken by the first Secretary of State, Thomas Jefferson, in 1793. The position originally taken by Jefferson left open the choice that the United States might at some later date wish to extend its boundaries. But, as the nineteenth century progressed, the United States became more firmly committed as the

²⁰ The exercise of the state police power in this area is, of course, subject to the normal constitutional limitations. See *Toomer v. Witsell*, 334 U.S. 385 (1948).

exponent of the rule of international law that three nautical miles was the maximum width which any country might properly assert for its maritime belt. See *United States v. California*, 332 U.S. 19, 31-34 (1947); Hughes, 18 Am. J. Int'l L. 229, 230.

This rule has been recognized by this Court. In *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 122 (1923) this Court stated the rule in the following terms:

"It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other enclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or 3 geographic miles."

As has already been pointed out by this Court in the *California* case (332 U.S. at 31-34) the United States took this position as part of its conduct of foreign relations. These positions were, therefore, binding on all the coastal states as to the width of the maritime belt off their shores which was within the territorial boundaries of the United States.

By joining the Union, Alabama became bound by the actions of the United States in the conduct of its foreign relations, and as a result, became bound by the rule, supported by the United States, that three nautical miles were the maximum limit of the width of the maritime belt which any nation, including the United States, might claim as part of its territorial boundaries. As a member of the Union, Alabama therefore has made no claims to boundaries including a maritime belt of more than three nautical miles in

width.⁴⁰ The defendants Texas, Louisiana and Florida, however, under color of Public Law 31 are asserting territorial jurisdiction over a maritime belt nine nautical miles in width. Moreover, they are asserting exclusive property rights over all the natural resources found within this maritime belt. Furthermore, the individual defendants are acquiescing in, and purporting to recognize the validity of, these claims.

Here the Court is presented with a situation in which there is not even a semblance of formal equality. Nor is this inequality a result of differences in area, location, geology or latitude. All four states border on the same Gulf of Mexico, and, indeed, are neighboring states. Yet the defendants, under color of Public Law 31, claim sovereignty, and the immensely valuable property interests incident thereto, in a maritime belt extending nine miles into the Gulf, while the complainant State of Alabama is entitled to sovereignty in a belt extending only three miles into the Gulf. It is difficult to conceive of a situation more precisely fitting the description of an "extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded" the description given by this Court in the *Texas* case of a situation prohibited by the "equal footing" clause.

⁴⁰ Under the traditional rule of measuring territorial waters, territorial belt is measured seaward along the ordinary low water mark on the coast of Alabama or from the seaward limit of inland waters. See Report of Special Master, *United States v. California*, No. 6 original, Oct. Term, 1952. This rule is restated in Section 2(c) of Public Law 31. In the case of Alabama therefore, the territorial belt of three miles is not only measured from its coastline, but also from the seaward limit of its inland waters.

There is another serious effect on Alabama and its citizens resulting from this status of inferior sovereignty. Prior to these attempted assertions of sovereignty under color of Public Law 31, Alabama's citizens enjoyed a non-exclusive privilege to fish or gather marine animal and plant life in waters of the Gulf of Mexico beyond the three mile belt off the shores of defendant states, unregulated and unmolested by these defendants. See *Toomer v. Witsell*, 334 U.S. 385 (1948); *Skiriotes v. Florida*, 313 U.S. 69 (1941). Within the three mile belt off these defendants' shores, Alabama citizens could fish, subject to regulation and licensing, but nevertheless protected by the Constitution against discriminatory treatment because of non-residence in these states. See *Toomer v. Witsell*, *supra*.

In *Toomer v. Witsell* this Court invalidated an attempt by South Carolina to impose a higher license fee on non-resident shrimpers for the privilege of shrimping in its waters than was imposed on South Carolina residents for the same privilege. Such action on the part of South Carolina was held to violate the privileges and immunities clause, Article IV, Section 2 and the commerce clause, Article I, Section 8 of the Constitution.

Attempted assertions of defendant states under color of Public Law 31 will, if not restrained by this Court, have two adverse effects upon Alabama citizens. First, these assertions will deprive them of their long standing rights and privileges to fish unmolested and unregulated on the high seas in the Gulf of Mexico beyond the three mile belt off the shores of Texas, Florida and Louisiana—and to do so without the payment of onerous excises. Second, these assertions may

place in jeopardy the right of Alabama fishermen to fish without discriminatory licensing and regulation within this three mile belt.

The facts set forth in Alabama's Complaint, however, show that none of the defendants are entitled to this special consideration even under the language of the statute.

Public Law 31 does not, by its terms, mention the defendants Texas, Louisiana, or Florida. The claim that Public Law 31 authorizes these states to extend their boundaries to include a maritime belt nine nautical miles in width is therefore based on a claim that the framers of Public Law 31 devised a test which would fit the situation of Texas, Louisiana and Florida, but no other state. If this is the case, as has already been shown, Public Law 31 is invalid as being contrary to the "equal footing" clause. In either event, of course, the relief from this Court would be the same.

Section 2(b) of Public Law 31 defines boundaries of the coastal states in the following manner:

"The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term 'boundaries' or the term 'land beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico. (emphasis supplied.)"

Section 4 of the Act provides a method by which states that have not heretofore claimed boundaries of three

nautical miles may do so. While it contains a provision that this shall be without prejudice to the claims of greater than three miles, it does not itself recognize any such claims, and so the claims of the defendants Texas, Louisiana and Florida to marginal seas of greater than three miles must be based on section 2(b). Under the language of this section, one of these three defendant states may claim a maritime belt of three marine leagues (nine nautical miles) into the Gulf (a) if it was entitled to such a belt at the time it became a member of the Union or (b) if Congress had approved such a claim prior to the enactment of Public Law 31 on May 22, 1953.

Alabama does not contest, in fact it alleges, that the defendant States of Texas, Louisiana and Florida are now claiming that their boundaries should extend at least nine nautical miles into the Gulf of Mexico. Texas, in fact, now claims that its boundaries should extend to the edge of the continental shelf;⁴² Louisiana claims that its boundaries should extend twenty-seven nautical miles into the Gulf;⁴³ Florida has modestly limited herself merely to nine miles.⁴⁴

As set forth in the Complaint, however, none of these three defendant states was entitled to a territorial belt of greater than three geographic miles when it

⁴² By an Act of May 16, 1941, the Texas Legislature purported to extend the territorial boundaries twenty-four miles further out in the Gulf of Mexico than the three mile limit. Laws of Texas, 47th Leg., p. 454. By an Act of May 23, 1947, the Texas Legislature purported to extend the boundaries of Texas to the outer edge of the continental shelf. Laws of Texas, 50th Leg., p. 451. See Vernon's Ann. Civ. Stat. Art. 5415a.

⁴³ 6 Dart. La. Gen. Stats. (1939), Secs. 9311.1-9311.4.

⁴⁴ Article I, Constitution of 1868.

joined the Union. Only one of them, Texas, had even made a claim of this character prior to the time it joined the Union, but this claim was not recognized by the United States. Similarly, as set forth in the Complaint, the Congress had not approved the claims of these three defendant states prior to May 22, 1953. The Congress has continually supported the position which the United States has championed in its conduct of foreign relations—that three nautical miles is the maximum permissible width of the belt of territorial waters. This position has been equally applicable to the Gulf of Mexico and the Atlantic and Pacific Oceans. In fact, some of the stoutest assertions of this position have arisen from controversies in the Gulf of Mexico, controversies with Mexico and Spain with respect to their claims of belts in excess of three miles in width off the coasts of Mexico and of Cuba.

The resolution of the issue as to whether the facts justify the claims of these three defendant states to a belt of territorial waters nine miles in width is, of course, an issue which requires factual proof. Alabama does not believe that these three defendant states, Texas, Louisiana and Florida, satisfy the criteria laid down by Public Law 31. Alabama has so alleged and Alabama is prepared to sustain this allegation with proof. At this point Alabama cites the exhaustive analysis of this country's support of the three mile limit made by this Court in the *California* case (332 U.S. 30-35) which supports its allegation.

The policy of the United States of supporting the three mile rule has not been one solely of the executive branch of the Government. It has also been expressed in treaties which have received the advice and consent of the Senate. Under the direction of former Secretary

of State Charles Evans Hughes, the United States entered into a series of treaties dealing with the problems raised by the smuggling of intoxicating liquor. Treaties of this kind were entered into with Great Britain,⁴⁶ Germany,⁴⁷ Panama,⁴⁸ The Netherlands,⁴⁹ Cuba⁵⁰ and Japan.⁵¹ All of these treaties contained a provision that:

"The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limit of territorial waters."

In *Cook v. United States*, 288 U.S. 102 (1933), this Court indicated that it will not construe a statute as abrogating or modifying a treaty obligation if it can possibly avoid it. The present statute should be applied, therefore, in light of the fact that the extension of the territorial waters in excess of three miles is a violation of treaties to which this country is a party. It must be borne in mind that these treaties are quite recent expressions of policy; and they have been even more recently reaffirmed. The Treaty of Peace with Japan went into effect on April 28, 1952, under which, within one year, the various allied powers would notify Japan of those various prewar bilateral treaties which they wished to have continued in force or revived. On April 22, 1953, the United States gave to the

⁴⁶ Treaty Series No. 685, 43 Stat. 1761.

⁴⁷ Treaty Series No. 694, 43 Stat. 1815.

⁴⁸ Treaty Series No. 707, 43 Stat. 1875.

⁴⁹ Treaty Series No. 712, 44 Stat. 2013.

⁵⁰ Treaty Series No. 738, 44 Stat. 2395.

⁵¹ Treaty Series No. 817, 46 Stat. 2446.

Japanese Government a list of prewar bilateral treaties which were to be considered as "having been continued in force or revived 3 months after the date of this note, i.e., July 22, 1953." See The Department of State Bulletin, Vol. XXVIII, No. 725, May 18, 1953, p. 721. The Treaty with Japan under which the two countries agreed to support the three mile limit was one of the treaties included. Thus as recently as July 22, 1953, the United States has reassumed the obligation to support the three mile limit. The claims of Texas, Louisiana and Florida that the proper limit of territorial waters off their coasts is nine, not three miles, must be evaluated against this solemn commitment.

IV

ALABAMA MAY PROPERLY SUE THE INDIVIDUAL DEFENDANTS AT BAR

Alabama in this action is suing the following individuals:

George M. Humphrey, acting under color of authority as Secretary of the Treasury; Douglas McKay, acting under color of authority as Secretary of Interior; Robert B. Anderson, acting under color of authority as Secretary of the Navy; Ivy Baker Priest, acting under color of authority as Treasurer of the United States.

As pointed out elsewhere in this brief, Alabama has alleged that, unless restrained by this Court, these individual defendants, acting under color of authority of Public Law 31, will infringe the rights and interests of Alabama in the described fund of approximately \$62,000,000 now held by them or under their control. Furthermore, as described earlier in this brief, these

individual defendants, acting under color of authority of Public Law 31, will acquiesce in unlawful assertions of the defendant states, also described earlier in this brief, all to the detriment of the interests and rights of Alabama.

It is perhaps unnecessary to point out that Alabama's suit is not one against the United States such as would run afoul of principles of sovereign immunity. This suit comes within that class of cases which allow an action against a public officer, either State or Federal, to enjoin him from seeking to enforce an unlawful or unconstitutional enactment to the detriment of the complainant. As stated by Mr. Justice Hughes in *Philadelphia Co. v. Stimson*, 223 U.S. 605, 620 (1912):

"... in case of an injury threatened by his illegal action, the officer cannot claim immunity from injunction process. The principle has frequently been applied with respect to state officers seeking to enforce unconstitutional enactments. . . . And it is equally applicable to a Federal officer acting in excess of his authority or under an authority not validly conferred."

As explained by this Court, the theory is that the conduct against which specific relief is sought is beyond the officers' powers, and, therefore, not the conduct of the sovereign. As stated by Chief Justice Vinson in *Larson v. Domestic and Foreign Corp.*, 337 U.S. 682, 690 (1949):

"A second type of case is that in which the statute or order conferring power upon the officer to take action in the sovereign's name is claimed to be unconstitutional. . . . Here, too, the conduct against which specific relief is sought is beyond the offi-

cers' powers and is, therefore, not the conduct of the sovereign. . . . (T)he power has been conferred in form but the grant is lacking in substance because of its constitutional invalidity."⁵¹

Most recently this Court in *Georgia R. Co. v. Redwine*, 342 U.S. 299, 304 (1952), stated:

"This Court has long held that a suit to restrain unconstitutional action threatened by an individual who is a state officer is not a suit against the State. These decisions were re-examined and re-affirmed in *Ex parte Young*, 209 U.S. 123 (1908), and have been consistently followed to the present day."

In the case at bar, as stated, Alabama seeks to enjoin the performance of acts by the individual defendants under color of authority of Public Law 31. Alabama contends that the authority purportedly conferred by Public Law 31 has been conferred in form but not in substance. This is because Public Law 31 violates the Constitution, as pointed out earlier in this brief, and, therefore, conduct under color of it is not conduct of the sovereign. The same is true, of course, of conduct not even authorized by its terms.

No further reason is needed to sustain the propriety of this suit against the individual defendants herein. However, it is noteworthy that no specific relief against these defendants is asked."⁵²

⁵¹ For a complete collection of precedents in this Court to the same effect see Appendix to the dissenting opinion of Frankfurter, J., 337 U.S. 682, 731.

⁵² But cf. *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682 (1949).

CONCLUSION

Wherefore, it is respectfully submitted that motion for leave to file this complaint be granted and that, upon hearing, the relief prayed for in the complaint be granted.

Respectfully submitted,

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APPENDIX A

PUBLIC LAW 31, 83D CONGRESS, 1ST SESSION, C. 63

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act".

TITLE I

DEFINITION

SEC. 2. When used in this Act—

(a) The term "lands beneath navigable waters" means—

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however,* That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

(g) The term "State" means any State of the Union:

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

TITLE II

LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

SEC. 3. RIGHTS OF THE STATES.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the re-

spective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on the effective date of this Act, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized

therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however, That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: Provided, however, That within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;*

(d) Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

(e) Nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify

the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

SEC. 4. SEAWARD BOUNDARIES.—The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

SEC. 5. EXCEPTIONS FROM OPERATION OF SECTION 3 OF THIS ACT.—There is excepted from the operation of section 3 of this Act—

- (a) all tracts or parcels or land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary

capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and, actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.

SEC. 6. POWERS RETAINED BY THE UNITED STATES.—(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

SEC. 7. Nothing in this Act shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377), June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amendatory thereof or supplementary thereto.

SEC. 8. Nothing contained in this Act shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided,*

however, That nothing contained in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this Act, or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this Act.

SEC. 9. Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

SEC. 10. Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve", is hereby revoked insofar as it applies to any lands beneath navigable waters as defined in section 2, hereof.

SEC. 11. SEPARABILITY.—If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby; without limiting the generality of the foregoing, if subsection 3 (a) 1, 3 (a) 2, 3 (b) 1, 3 (b) 2, 3 (b) 3, or 3 (c) or any provision of any of those subsections is held invalid, such subsection or provision shall be held separable and the remaining subsections and provisions shall not be affected thereby.

APPENDIX B

RELEVANT PORTIONS OF THE ACTS OF CONGRESS ADMITTING THE STATES OF ALABAMA, LOUISIANA, FLORIDA, TEXAS AND CALIFORNIA TO THE UNION

Alabama (Act of March 2, 1819, c. 47, 3 Stat. 489):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress

assembled, That the inhabitants of the territory of Alabama be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and that the said territory, when formed into a state, shall be admitted into the union, upon the same footing with the original states, in all respects whatever.

Louisiana (Act of April 8, 1812, c. 50, 2 Stat. 701):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana:

Florida (Act of March 3, 1845, c. 48, 5 Stat. 742):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

Texas (Joint Resolution No. 8 of March 1, 1845, 5 Stat. 797):

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States:

California (Act of September 9, 1850, c. 50, 9 Stat. 452):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress

assembled, That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

APPENDIX C

LEGISLATIVE ACTS SETTING FORTH BOUNDARY CLAIMS OF TEXAS AND LOUISIANA AND CONSTITUTIONAL PROVISION SETTING FORTH BOUNDARY CLAIM OF FLORIDA

TEXAS

Act of May 16, 1941, L. Texas, 47th Leg., p. 454.

Boundary Statute—*General and Special Laws of Texas*, 47th Legislature, Regular Session, 1941, page 454:

Be it enacted by the Legislature of the State of Texas: "Section 1. That the gulfward boundary of the State of Texas is hereby fixed and declared to be a line located in the Gulf of Mexico parallel to the three (3) mile limit, as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four (24) marine miles further out in the Gulf of Mexico than the said three (3) mile limit.

"Section 2. That, subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Texas has full sovereignty over all the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Texas, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Texas, as herein fixed.

"Sec. 3. That the State of Texas owns, in full and complete ownership, the waters of the Gulf of Mexico and of the arms of the said Gulf, and the beds and shores of the Gulf of Mexico, and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms, either at low tide or high tide, within

the boundaries of Texas, as herein fixed; and that all of said lands are set apart and granted to the Permanent Public Free School Fund of the State, and shall be held for the benefit of the Public Free School Fund of this State according to the provisions of law governing the same.

"Sec. 4. That this Act shall never be construed as containing a relinquishment by the State of Texas of any dominion sovereignty, territory, property or rights that the State of Texas already had before the passage of this Act.

"Sec. 5. The fact that the land included within the boundaries hereinabove fixed belongs to the Permanent Public Free School Fund of this State, and that the same is believed to be oil bearing land, and that the development of same in accordance with the provisions of law governing the sale or lease of minerals belonging to said Permanent Free School Fund is a major duty of the Legislature, and requires prompt and immediate attention, creates an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be, and the same is hereby suspended, and that this Act take effect and be in full force from and after its passage, and it is so enacted."

Approved May 16, 1941.

Act of May 23, 1947, L. Texas, 50th Leg., p. 451.

"Be it enacted by the Legislature of the State of Texas:

Section 1. That Section 1 of Senate Bill No. 130, Chapter 286, Act of the 47th Legislature, be and the same is hereby amended so as to hereafter read as follows:

"Section 1. The Gulfward boundary of the State of Texas is hereby fixed and declared to be a line beginning in the Gulf of Mexico at the mouth of the Sabine River; thence on a grid bearing S. 35 degrees 55 minutes and 22 seconds E. to the farthestmost edge of the continental shelf from the Gulf Shore line; thence in a Westerly and Southerly direction with the edge of the continental shelf to a point opposite the mouth of the Rio Grande River; thence to the mouth of the Rio Grande River."

Sec. 2. The fact that the land included within the boundaries hereinabove fixed belongs to the Permanent Public Free School Fund of this state, and the state has never by

statute embraced all of same within the boundary of Texas, and that the same is believed to be oil bearing land, and that the development of same in accordance with the provisions of law governing the sale or lease of minerals belonging to said Permanent Free School Fund is a major duty of the Legislature, and requires prompt and immediate attention, creates an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be, and the same is hereby suspended, and that this Act take effect and be in full force from and after its passage, and it is so enacted."

Approved May 23, 1947.

LOUISIANA

Louisiana Revised Statutes 1950, Title 49, Sections 1 and 2:

"§ 1. Gulfward boundary

The gulfward boundary of the state is a line located in the Gulf of Mexico parallel to the three-mile limit as determined according to international law, and is located twenty-four marine miles further out in the Gulf than the three-mile limit.

"§ 2. Sovereignty over waters within boundaries

Subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Louisiana has full sovereignty over all of the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Louisiana, and over the beds and shores of the Gulf and all arms of the Gulf within the boundaries of Louisiana."

FLORIDA

Constitution of State of Florida 1868—Article I

"State boundaries. The boundaries of the State of Florida shall be as follows. Commencing at the mouth of the

river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; then southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river: thence to the place of beginning."

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No. , Original

Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ALABAMA, Complainant,

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST, Defendants.

**REPLY BRIEF IN SUPPORT OF MOTION
FOR LEAVE TO FILE COMPLAINT
AND COMPLAINT**

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only assert that the act complained of have an adverse effect on the health or economic welfare of a substantial number of its citizens. When there is injury to the health and welfare of a substantial number of its citizens, the state itself has sustained an injury which is sufficient to sustain a suit. See *Pennsylvania v. West Virginia, supra*, at 592.

The case at bar meets these requirements. While the acts complained of would not take place in Alabama, they would, unless restrained by this Court, have a decidedly adverse effect, in Alabama, on the economic welfare of a substantial number of the citizens of Alabama. In the first place, a substantial number of Alabama's citizens earn their livelihood from the fishing industry carried on in the Gulf of Mexico. The number of citizens of Alabama who are wholly or partly dependent on this industry for their livelihood runs into the thousands and the gross revenue from the industry in Alabama approximates \$15,000,000 a year. Fishing carried on in the areas within nine miles from the coasts of Texas, Louisiana and Florida, described in paragraphs XII, XV and XVII of the Complaint plays an essential role in the maintenance of Alabama's fishing industry. Yet acting under the color of Public Law 31, the States of Texas, Louisiana and Florida are asserting not only the right to exercise control over this fishing out to nine nautical miles from their coasts but also the ownership of the fish and other natural resources in this area—an assertion which carries with it the right to discriminate against Alabama fishermen and to exclude them altogether." Such action would

¹¹ Section 2(e) of Public Law 31 defines "natural resources" as including "oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and

have a decidedly adverse effect upon the economic welfare of a substantial number of Alabama citizens.

In the second place, there is held, either by California or by the individual defendants or subject to their control, a sum of over \$62,000,000. This sum consists of rents and royalties derived from leases or licenses to ~~extract~~ the natural resources described in paragraphs IX, X and XIII of the Complaint, *after* this Court had held that these natural resources were subject to the paramount jurisdiction and control of the Federal Government, and that the royalties from the development of these natural resources belong to the Federal Government, to be held in trust for all the people of the United States.¹² Yet unless restrained by this Court, the individual defendants will give these sums solely to three states, the defendants California, Texas and Louisiana.

In the past, Congress has carried out its trusteeship in expending Federal funds for the benefit of all the people of the United States in various ways. But under any formula which the Congress could work out if *it recognized this trusteeship which the Constitution*

plant life". Section 3(a) of Public Law 31 provides that "title to and ownership of" the "natural resources" beneath the boundaries of the states shall be in the states. The state statutes by which the defendant states of Texas, Louisiana and Florida purport to extend their boundaries nine miles, or further, into the Gulf of Mexico, are set forth in Appendix C. At the very least, the effect of these statutes, together with statutes regulating fishing within their "boundaries," cited p. 5, *supra*, is to subject Alabama citizens to the requirement of paying license fees to these three defendant states for the privilege of fishing on the high seas.

¹² "The Government . . . holds its interest here as elsewhere in trust for all the people. . . ." (U.S. v. California, 332 U.S. 19, 40 (1947)).

imposes upon it, the citizens of Alabama would obtain some benefit from this fund.¹⁸ Nor does this interest of the citizens of the State of Alabama depend on the mere expectancy that the Congress *might* decide to make sums of this magnitude available to the states. Congress has already made that decision. It has already attempted to make this fund available to the states, but has tried to limit the states which can share in this fund to the States of California, Texas and Louisiana. It can therefore be seen that distribution of this fund solely for the benefit of these three states would have a substantial adverse effect, in Alabama, upon the economic welfare of the citizens of Alabama.

Finally, Alabama and its citizens have a similar equitable interest in the vast sums to be derived from the continued and ever-increasing development of the natural resources described in paragraphs IX, X, XIII and XVI of the Complaint. The value of these natural resources is at least fifty billion dollars. These natural resources have been declared by this Court to be under the paramount jurisdiction and control of the Federal Government. This Court has further declared that this paramount jurisdiction and control carries with it the right to develop these resources and to derive royalties and other revenues from them, revenues which the Federal Government must hold for all the people of the

¹⁸ Alabama is one out of forty-eight states (2.08%); Alabama, according to the 1967 census, had a population of 3,061,743 out of a total national population of 150,697,361 (2.40%); Alabama has 2.52% of the national total of enrolled school children of the ages between 5 and 17. On any theory therefore, something between two per cent (\$1,256,000) and two and a half per cent (\$1,570,000) would appear to be a reasonable estimate of the interest of the citizens of Alabama in this fund.

United States. Alabama does not maintain that it is able to show with mathematical particularity the precise value of its equitable interest in these natural resources and the revenues to be derived from them, nor is Alabama required so to show. In view of the immense value of the natural resources involved in this controversy, according to any estimate, Alabama's interest is clearly substantial. Moreover, it is clear that Alabama will be completely and finally denied *any* interest in these natural resources and revenues unless the defendants, both state and individual, are enjoined from taking the action which they propose to take under color of Public Law 31.

The fact that the realization of economic benefits to Alabama or its citizens (which Alabama seeks to protect) may conceivably depend upon subsequent action of the Congress does not deprive Alabama of its standing to sue. The interest of Alabama is much more immediate and direct than that of the then former Secretary of the Interior in the case of *United States ex rel. Chapman v. Federal Power Commission*, 345 U.S. 153 (1953). In that case the Secretary of the Interior was held to have standing to appeal from an order of the Federal Power Commission granting a license to a privately-owned utility company to construct a hydro-electric facility at Roanoke Rapida, North Carolina. The sole official interest of the Secretary of the Interior was his statutory duty to act as marketing agent of surplus power which was generated at projects under the control of the Department of the Army and which, in the opinion of the Secretary of the Army, was not required for the operation of the project. This marketing function could come into existence only if Congress, at some future date, were to authorize the construction of a

dam, appropriate the money for such construction, and a dam were to be constructed at which power was generated which an independent Federal official decided his Department did not need. Yet the Court was unanimous in its opinion that Secretary Chapman had standing to question the order of the Federal Power Commission in the Courts.

In concluding the discussion of Alabama's standing to sue, it may be helpful to deal with the questions which may be raised as a result of the decision of this Court in *Massachusetts v. Mellon*, 262 U.S. 447 (1923). In that case the State of Massachusetts attempted to enjoin the Secretary of the Treasury and other Federal officials from putting in effect the Maternity Act of 1921. This Act provided for an appropriation of funds from the general funds of the Treasury, to be apportioned among those states that would cooperate with the Federal Government in a program of reducing maternal and infant mortality. The Court held that Massachusetts had no standing to attack the constitutionality of the legislation.

Insofar as Alabama is suing to protect its sovereign interests, as opposed to its interests as quasi-sovereign and *parens patriae*, it is not necessary even to consider *Massachusetts v. Mellon*. There has never been any question but that a state is entitled to sue to protect its interests as sovereign, even though those sovereign interests are threatened with invasion under color of an Act of Congress.¹⁴

An analysis of the Court's opinion in *Massachusetts v. Mellon* makes it clear that the Court was not impressed by the argument that the action brought by

¹⁴ See *Kansas v. Colorado*, 206 U.S. 46, 85-92 (1907).

Massachusetts was necessary to prevent a threatened detriment to the citizens of Massachusetts by the expenditure of the general funds of the Treasury to which the citizens of Massachusetts (along with those of the other forty-seven states) had contributed by paying Federal taxes. This is clear, since, under the Maternity Act, Massachusetts was offered the same chance to obtain the benefits of the Act for its citizens as were the other forty-seven states. There was no real question raised as to the fairness of the proposed method of apportionment. Therefore, the Court, while it expressly disclaimed holding that a state could never attack the constitutionality of a Federal statute as *parens patriae* for its citizens," held that Massachusetts had not shown that it was entitled to do so in that proceeding.

In the view of the Court, the real claim of Massachusetts was that the offer of the Federal Government to cooperate in the field of maternity aid in Massachusetts was an invasion of the powers reserved to Massachusetts under the Tenth Amendment. It was apparent on the face of the statute, however, that the Act would be applied in Massachusetts only if Massachusetts agreed to its being applied. The Court felt, therefore, that it was being required to answer a mere abstract political question. As the Court itself stated the question: (262 U.S. at 483)

"In the last analysis, the complaint of the plaintiff State is brought to the naked contention that

¹⁵ "We need not go so far as to say that a State may never intervene by suit to protect its citizens against any form of enforcement of unconstitutional acts of Congress; but we are clear that the right to do so does not arise here." 262 U.S. at 485.

Congress has usurped the reserved powers of the several States by the mere enactment of the statute, though nothing has been done and nothing is to be done without their consent; and it is plain that that question, as it is thus presented, is political and not judicial in character, and therefore is not a matter which admits of the exercise of the judicial power."

It is thus clear that the Court in *Massachusetts v. Mellon* did not hold that Massachusetts could not assert its interests if an Act of Congress were involved. It rather held that the interests which Massachusetts asserted were not in fact threatened with invasion.

Alabama asserts a real sovereign interest and a substantial financial interest in the outcome of this controversy. This interest is in real jeopardy by the threatened action of the defendants. Unlike Massachusetts in *Massachusetts v. Mellon*, it is offered no option by which it can protect its interests; its interests can be protected only by action of this Court. Alabama is not attempting to raise any abstract question of the respective spheres of political power between Alabama and the Federal Government. Alabama claims that Public Law 31 and the action proposed to be taken under color of it, is in violation of specific constitutional provisions—constitutional provisions limiting the power of the Federal Government, limiting the power of the defendant states, and granting definite interests to Alabama.

It is also respectfully suggested that an important factor in the decision of this Court in *Massachusetts v. Mellon* was the far-reaching implication of an opposite decision in that case. The Court could not have failed to have been aware that a decision that Massachusetts

had standing to contest the constitutionality of the Maternity Act would have made it possible in the future for states to question before the Court every item of Federal expenditures. This would be so, moreover, even though the interest of the State in attacking the expenditures was not to protect a legitimate economic or financial interest, but was primarily political. Such a decision would place before the Court a never-ending stream of cases on what had not previously been considered justiciable controversies.

Here there is no question that Alabama's interest in attacking the constitutionality of this statute is economic. The gravity of the effect of the statute on Alabama has already been shown. Moreover, a decision recognizing the propriety of Alabama's interest will not have any of the far-reaching effects which were feared by the Court in *Massachusetts v. Mellon*. Here there is no question but that the fundamental dispute which lies at the root of this controversy is a judicial one. This Court, it is submitted, has already passed on the justiciability of the present controversy in *United States v. California*, 332 U.S. 19, 24-25 (1947):

"The point of difference is as to who owns, or has paramount rights in and power over several thousand square miles of land under the ocean off the coast of California. The difference involves the conflicting claims of federal and state officials as to which government, state or federal, has a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land, much of which has already been, and more of which is about to be, taken by or under authority of the state. Such concrete conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences which can only be

settled by agreement, arbitration, force, or judicial action."

The case at bar is merely a continuation of the same controversy. The context is altered, but the basic question, as in the *California* case, is whether the natural resources involved in this suit are to be held for the exclusive benefit of the defendant states or for the benefit of all the states and the citizens thereof. Alabama, as quasi-sovereign and *parens patriae*, has standing to sue to protect its interests and those of its citizens, in these resources.

A further analysis of *Georgia v. Pennsylvania Railroad, supra*, indicates the strength of Alabama's case when suing as *parens patriae*. There the Court permitted the State of Georgia to bring a civil action for an injunction under the anti-trust laws because Georgia alleged that violations of the anti-trust laws were having an adverse economic effect upon a substantial number of its citizens. The opposing argument was made that the Federal Government alone could act as *parens patriae* for the citizens of Georgia, under the anti-trust laws, just as it is anticipated that it will be argued in this case that the Federal Government alone has the right to act as *parens patriae* for the citizens of Alabama. In fact, the argument would appear to have been stronger in *Georgia v. Pennsylvania Railroad* than in this case, both because the statutory scheme of the anti-trust laws did provide for suits of that character by the Federal Government, and because the suit was one by a state against citizens of another state, where the jurisdiction of this Court is merely discretionary. Yet the argument was rejected and Georgia permitted to sue as *parens patriae*.

This Court has allowed a state, suing as quasi-sovereign, to attack the constitutionality of a Federal law. In *Missouri v. Holland*, 252 U.S. 416 (1920), the Court recognized the standing of the State of Missouri to attack the enforcement, in Missouri, of a migratory bird statute, which was claimed to be invalid as interfering with the rights reserved to the states by the Tenth Amendment. The Court, speaking through Mr. Justice Holmes, stated that the bill of complaint was "a reasonable and proper means to assert the alleged quasi sovereign rights of a State." 252 U.S. at 431.

Although this case was decided before *Massachusetts v. Mellon*, its authority was reaffirmed by the decision of this Court in *Hopkins Savings Association v. Cleary*, 296 U.S. 315 (1935). In that case the Court held that a state had standing, as quasi-sovereign and *parens patriae*, to question the constitutionality of a Federal act claimed to authorize the conversion of building and loan associations, organized under state law, to Federal associations, without obtaining the permission of the state. The Court cited *Missouri v. Holland* with approval. It further observed that the state had a duty to protect the "non-vocal" creditors and investors in the state association and that it could vindicate this duty by suit. It did not consider it a bar that the action complained of was taken under color of a Federal statute. The injury threatened to the "non-vocal" creditors and investors was of a most general nature; and its extent was by no means clear. In the instant case Alabama's citizens are threatened with economic loss much more certain and immediate than the injury threatened to the "non-vocal" creditors and investors in the *Cleary* case. And the interest which Alabama is asserting is

not one which it is asserting against the Federal Government. It is asserting an interest as quasi-sovereign and *parens patriae* against other states, acting under color of Federal legislation, just as the state officials in *Hopkins Savings Association v. Cleary* were asserting claims on behalf of the citizens of the state against a corporation which was acting under color of Federal legislation. And the individual defendants in this case are not joined because they are asserting any rights on behalf of the Federal Government. They are joined only because of their proposed acquiescence and cooperation in the unlawful claims of the defendant states.¹⁶

II

PUBLIC LAW 31 IS NOT A VALID EXERCISE OF THE POWER OF CONGRESS TO DISPOSE OF PUBLIC LANDS OF THE UNITED STATES.

On three occasions this Court has held that the submerged lands and resources described in paragraphs IX, X, XIII, XVI and XXXI of the Complaint do not belong, and have never belonged, to defendant states; and that the United States has paramount rights and dominion over them. *United States v. California*, 332 U.S. 19 (1947); *United States v. Louisiana*, 339 U.S. 699 (1950); *United States v. Texas*, 339 U.S. 707 (1950). The Court felt that this result was required by the constitutional system of the United States. Public Law 31 attempts to establish title in the defendant states to property and resources over which the United States has paramount rights and do-

¹⁶ The grounds for distinction between this case and *Massachusetts v. Mellon* are applicable *a fortiori* to *Florida v. Mellon*, 273 U.S. 12 (1927).

minion, and over which these states have never had any title or paramount rights. The value of the assets involved is immense—estimated at fifty billion dollars, or more.

In the *California* case, the Court pointed out that any rights which existed in the area now in controversy were rights which existed only as the result of action taken by the Federal Government in the exercise of its power over foreign relations. (See 332 U.S. at 35-36). The defendant states had no part in the development of such rights. This followed from the fact, pointed out by this Court in *United States v. Curtiss-Wright Corp.*, 299 U.S. 304 (1936), that there was an "entire absence" of power in the states to deal with matters of this kind (see 299 U.S. at 317) and hence an entire absence of power on the part of the defendant states to establish rights to the lands and natural resources lying seaward of the ordinary low water mark off their coasts.

From this the Court deduced that the rights to these lands and natural resources were themselves rights held by the Federal Government, not by the coastal states. In the words of the Court:

"And insofar as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use." (332 U.S. at 35)

In asserting "its rights under international law", the Federal Government is acting on behalf of all the United States. The United States cannot act solely on behalf of four defendant states. It cannot, as Public Law 31 purports to do, delegate to four defendant

states the right to develop assets which result solely from the assertion of *rights of the United States* under international law, and develop them solely for the benefit of its own citizens. The fruits of the conduct of the foreign relations of the United States must be available to all the United States.

The constitutional provision under which Congress purported to act in passing Public Law 31, is Article IV, Section 3, Clause 2 of the Constitution which provides that the Congress has power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . ." Alabama believes that arguments advanced show that something much more than property is involved. As this Court pointed out in the *California* case, the rights involved in this dispute were rights "transcending those of a mere property owner." (See 332 U.S. at 29). In the *Texas* case, moreover, this Court indicated that any property interests which existed were "so subordinated to the rights of sovereignty as to follow sovereignty." (See 339 U.S. at 719). Even assuming, however, that something akin to "property" in the ordinary sense is involved in this dispute, Public Law 31 is still an invalid attempt to exercise the power to dispose of property belonging to the United States. The power granted to the United States under this Article IV, Section 3, Clause 2 of the Constitution is one which must be exercised in a fiduciary capacity. Indeed, the opinion of the Court in *United States v. California*, 332 U.S. 19, 40 (1947), described the role of the United States with respect to the very interests now in controversy in the following terms:

"The Government . . . holds its interests here as elsewhere in trust for all the people . . ."

Although there may be room for divergent views as to the most-desirable technique of discharging trust responsibilities, there is no question but that the trustee must act *as trustee for all beneficiaries*. It is hard to see how Public Law 31 can satisfy this basic requirement for the proper exercise of a trust. It purports to have "recognized" and "confirmed" "title to and ownership of" lands and natural resources in controversy in this proceeding in the defendant states, notwithstanding the fact that this Court has consistently held that neither title nor ownership to these lands or natural resources has ever been in the defendant states. Prior to the enactment of Public Law 31 these resources were unquestionably resources of the United States, valuable monetarily in the amount estimated at from fifty billion to three hundred billion dollars. Public Law 31, if applied as threatened by the defendants, would advance the fortunes of the four defendant states to the detriment of the other forty-four. This cannot be justified as a valid congressional exercise of a public trust for all the people. In fact, as will be shown in detail later in this portion of the argument, the legislative history of Public Law 31 shows that its framers, far from being concerned with exercising a trust for the benefit of all the people, were primarily, if not entirely, concerned with reversing the decisions of this Court which had held that these natural resources belonged to all the people rather than merely the defendant states alone.

An indication of the criteria which this Court applies in determining whether a particular disposition

of public property was a proper exercise of a public trust is contained in the decision of the Court in *Illinois Central R. Co. v. Illinois*, 146 U.S. 387 (1892). The holding in that case is strengthened by the fact that the disposition under review was a disposition by a state legislature rather than by the Congress. The Court may be expected to apply at least as strict criteria in the case of a congressional disposition, which is subject to a particular constitutional provision, as in the case of a state disposition, subject only to the Fourteenth Amendment.¹⁷ In the *Illinois Central* case the Illinois legislature had granted to a railroad company submerged lands in the bed of Lake Michigan for a considerable distance into the lake. This Court held the grant invalid and hence revocable by a later Illinois legislature. The language of the opinion is so apt that extensive quotation seems appropriate (pp. 452 et seq.):

"It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties. . . . Such abdication is not consistent with the exercise of that trust which requires the government of the State to preserve such waters for the use of the public. The trust devolving upon the State for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property. The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be dis-

¹⁷ Compare *Helvering v. Davis*, 301 U.S. 619, 640 (1937), with *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 514 (1937).

posed of without any substantial impairment of the public interest in the lands and waters remaining. . . . A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties, . . . than it can abdicate its police powers in the administration of government and the preservation of the peace. . . . So with trusts connected with public property, or property of a special character, like lands under navigable waters, they cannot be placed entirely beyond the direction and control of the State.

“Surely an act of the legislature transferring the title to its submerged lands and the power claimed by the railroad company, to a foreign State or nation would be repudiated, without hesitation, as a gross perversion of the trust over the property under which it is held. . . .

“Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the State can be resumed at any time. . . . (T)he power to resume the trust whenever the State judges best is, we think, incontrovertible. The position advanced by the railroad company . . . would place every harbor in the country at the mercy of a majority of the legislature of the State in which the harbor is situated.

“We cannot, it is true, cite any authority where a grant of this kind has been held invalid, for we believe that no instance exists where the harbor of a great city and its commerce have been allowed to pass into the control of any private corporation. But the decisions are numerous which declare that such property is held by the State, by virtue of its

INDEX

	Page
Statement	1
Argument	2
I. The threatened injury sought to be averted is immediate	2
II. The State of Alabama has standing to sue	4
A. Alabama has standing as a sovereign state	4
B. Alabama has standing as quasi-sovereign and <i>parens patriae</i>	8
III. Alabama's Complaint states a cause of action	12
IV. The United States is not an indispensable party	18
Conclusion	28

CITATIONS

Cases:

<i>Appleby v. City of New York</i> , 271 U.S. 364 (1926)	15, 16
<i>Ashwander v. Tennessee Valley Authority</i> , 297 U.S. 288 (1936)	14
<i>Belknap v. Schild</i> , 161 U.S. 10 (1896)	21
<i>Ex parte Young</i> , 209 U.S. 123 (1908)	20
<i>Georgia v. Tennessee Copper Co.</i> , 206 U.S. 230 (1907)	12
<i>Hopkins Savings Association v. Cleary</i> , 296 U.S. 315 (1935) ..	11
<i>Ickes v. Fox</i> , 300 U.S. 82 (1937)	25, 28
<i>Illinois Central R. Co. v. Illinois</i> , 146 U.S. 387 (1892)	14, 15, 16, 17, 18
<i>Laidly v. Huntington</i> , 121 U.S. 179 (1887)	20
<i>Land v. Dollar</i> , 330 U.S. 731 (1947)	25
<i>Larson v. Domestic and Foreign Commerce Corp.</i> , 337 U.S. 682 (1949)	21, 25
<i>Marbury v. Madison</i> , 1 Cranch 137 (1803)	12, 20
<i>Martin v. Waddell</i> , 16 Pet. 366 (1842)	5
<i>Massachusetts v. Mellon</i> , 262 U.S. 447 (1923)	9, 11
<i>Minnesota v. Hitchcock</i> , 185 U.S. 373 (1902)	22
<i>Missouri v. Holland</i> , 252 U.S. 416 (1920)	11
<i>Morrison v. Work</i> , 266 U.S. 481 (1925)	24
<i>Naganab v. Hitchcock</i> , 202 U.S. 473 (1906)	23
<i>North Carolina v. Temple</i> , 134 U.S. 22 (1890)	26
<i>Pennsylvania v. West Virginia</i> , 262 U.S. 553 (1923)	11
<i>Pollard's Lessee v. Hagan</i> , 3 How. 212 (1845)	5-6
<i>Shiriotos v. Florida</i> , 313 U.S. 69 (1941)	10
<i>United States v. California</i> , 332 U.S. 19 (1947)	6, 17, 19
<i>United States v. Louisiana</i> , 339 U.S. 699 (1950)	6, 17, 19
<i>United States v. Texas</i> , 339 U.S. 707 (1950)	6, 7, 17, 19
<i>Youngstown Sheet and Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952)	13

Constitutional Provisions:

Article III, Constitution	22
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Supreme Court of the United States

OCTOBER TERM, 1953

No. , Original

STATE OF ALABAMA, Complainant,

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST, Defendants.

REPLY BRIEF FOR COMPLAINT

STATEMENT

In this brief Alabama replies to four types of arguments made by some or all of the defendants as reasons why this Court should not hear Alabama's case. First, the defendants argue that there is no threatened injury and hence no reason for exercising the jurisdiction of this Court. Second, all of the defendants deny Alabama's standing to object to Public Law 31, even if it is unconstitutional. Third, the individual defendants urge that Public Law 31 is constitutional. Fourth, all the defendants argue that the United States is an indispensable party.

ARGUMENT

I. THE THREATENED INJURY SOUGHT TO BE AVERTED IS IMMEDIATE.

Alabama has brought this suit to prevent the defendant states and the individual defendants from taking action which would inflict irreparable injury on Alabama and its citizens. These actions include the assertion by the defendant states of ownership, exclusive jurisdiction and control by the defendant states of the natural resources of the seabed off their shores. In the case of three defendants, Texas, Florida and Louisiana, these assertions include the entire area within nine nautical miles off their shores.¹ In the case of California these assertions include the entire area within three miles off its shores.² The individual defendants are acquiescing in these claims.³ The defendants Texas, Louisiana and Florida are also asserting territorial jurisdiction with respect to that portion of the high seas which is between three and nine miles off their shores.⁴ These states have statutes regulating commercial fishing within their territorial boundaries and they are unlawfully applying these statutes to this portion of the high seas, thus requiring citizens of Alabama to pay license fees to these states for the privilege of fishing on the high seas.⁵

Alabama has alleged these facts in its Complaint. Alabama is prepared to prove these facts. These are the facts which, Alabama submits, require the exercise

¹ Complaint, Paragraphs XXII, XXIII, XXV, XXVI, XXVIII, XXIX.

² Complaint, Paragraph XXI.

³ Complaint, Paragraph XXXIII.

⁴ Complaint, Paragraphs XXII, XXV, XXVIII.

⁵ Complaint, Paragraphs XXIV, XXVII, XXIX.

of jurisdiction by this Court to prevent irreparable injury.

The defendants have confused the issue by attempting, in effect, to deny the truth of certain of these allegations of fact in Alabama's Complaint while at the same time arguing that the Complaint should not be heard. The defendants are thereby attempting to avoid the responsibility of putting those facts in issue so that Alabama may have an opportunity to prove them. Thus the briefs of both Louisiana and Florida attempt to deny that those states are claiming territorial jurisdiction over the portion of the Gulf of Mexico from three to nine miles from their shores.⁶ The brief of the individual defendants attempts to question whether the defendant states of Texas, Louisiana and Florida are claiming territorial jurisdiction over this portion of the Gulf of Mexico from three to nine miles from their shores and, as a result, ownership and exclusive jurisdiction and control of the natural resources of the seabed in the area, and that the individual defendants will acquiesce in these claims if not restrained by this Court.⁷ The three defendant states of Texas, Louisiana and Florida attempt to cast doubt on the existence of licensing statutes for commercial fishermen which are applicable in this three to nine mile belt and on the intent of the defendants Texas, Louisiana and Florida to enforce them.⁸

⁶ Objections of Louisiana, p. 15; Objections of California and Florida, p. 10.

⁷ Opposition of Defendants Humphrey, et al., pp. 31-32.

⁸ Objections of Texas, p. 16; Objections of Louisiana, p. 20; Objections of California and Florida, p. 30. The statutes by which these states regulate fishing within their territorial boundaries are cited on page 5 of Alabama's Brief in Support of Motion for Leave to File Complaint.

It is elementary that in entertaining a motion to dismiss a complaint (which is what the defendants' briefs amount to) a court must assume that all well pleaded facts set forth in the complaint are true. The individual defendants, however, attempt to avoid the application of this rule by characterizing these allegations as mere predictions without the statement of any facts as a foundation.* But there is no rule that evidence must be pleaded. In attempting to devise a rule that an allegation of what the defendants will do, if not restrained by the Court, is not properly pleaded because it is a prediction, the defendants are striking a blow at the entire preventive jurisdiction of courts of equity.

Alabama's Complaint alleges facts—many of them open and notorious—which show that Alabama and its citizens are faced with an immediate threat of irreparable injury. Alabama is prepared to prove these allegations when the defendants have properly placed them in issue. Alabama's Complaint cannot be dismissed on the basis of mere denials of fact. Therefore the further consideration of the Motion for Leave to File a Complaint must be on the basis of the facts as set forth in the Complaint.

II. THE STATE OF ALABAMA HAS STANDING TO SUE.

A. ALABAMA HAS STANDING AS A SOVEREIGN STATE.

The State of Alabama is suing both as sovereign and as quasi-sovereign and *parens patriae*. As sovereign the State of Alabama is suing to protect its right to be treated on an equal footing with all the defendant states with respect to interests in the natural resources

* Opposition of Defendants Humphrey, et al., p. 32, fn. 10.

involved in this proceeding, interests which have been held to be an essential part of sovereignty. As sovereign, the State of Alabama is also suing to protect its right to be treated on an equal footing with the defendants Texas, Louisiana and Florida with respect to the width of the belt of territorial waters off its shores.

The various defendants argue that the equal footing clause relates only to the political rights of sovereignty of the state, not to its property rights or boundaries. They further argue that there may be certain disparities between states as to the ownership of upland properties within their boundaries and that these disparities are not prohibited by the equal footing clause. This argument, however, overlooks the distinction between upland properties and properties beneath navigable waters which has consistently been made both by the Congress in admitting new states to the Union and by the courts.

The original states owned the natural resources of the subsoil of navigable inland waters within their boundaries. *Martin v. Waddell*, 16 Pet. 366 (1842). The states which entered the Union subsequently entered on an equal footing with the original states and were entitled to similar property rights.¹⁰

¹⁰ The fact that the Congress and the courts have both included property interests in submerged lands within the equal footing clause makes it unnecessary to decide what the result would be if the Congress in admitting a new state attempted to give it greater or less rights to submerged lands. The Court in *Pollard's Lessee v. Hagan*, 3 How. 212, 229 (1845), however, has stated: "Then to Alabama belong the navigable waters, and soils under them, in controversy in this case, subject to the rights surrendered by the Constitution to the United States; and no compact that might be made between her and the United States could diminish or enlarge these rights."

Pollard's Lessee v. Hagan, 3 How. 212 (1845). It is thus clear that the Court has held that property interests in the natural resources of the submerged lands under inland waters are covered by the equal footing clause. *United States v. California*, 332 U.S. 19 (1947), *United States v. Texas*, 339 U.S. 707 (1950) and *United States v. Louisiana*, 339 U.S. 699 (1950), make it clear that the equal footing clause applies to the natural resources underlying the marginal seas off their shores. As this Court pointed out in the *California* case, the acquisition of this three mile belt was accomplished by the National Government. See 332 U.S. at 34. For this reason, when additional states were admitted to the Union on an equal footing with the original states, they were no more entitled to the ownership of the natural resources underlying the marginal seas off their shores than were the original states.

Any doubt on this point was removed by the decision of the Court in the *Texas* case. There the Court, speaking of the interests in the submerged lands off the coast of Texas, described the constitutional protection afforded by the equal footing clause in the following manner:

"The same result must be reached here if 'equal footing' with the various States is to be achieved. unless any claim or title which the Republic of Texas had to the marginal sea is subordinated to this full paramount power of the United States on admission, there is or may be in practical effect a subtraction in favor of Texas from the national sovereignty of the United States. Yet neither the original thirteen States (*United States v. California*, *supra*, pp. 31-32) nor California nor Louisiana enjoys such an advantage. The 'equal footing' clause prevents extension of the sover-

eighty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty (*Pollard's Lessee v. Hagan, supra*) which would produce inequality among the States. For equality of States means that they are not 'less or greater, or different in dignity or power.' See *Coyle v. Smith*, 221 U.S. 559, 566. There is no need to take evidence to establish that meaning of 'equal footing.' (339 U.S. at 719-20.)

Thus in the *Texas* case this Court held that the property interests in the resources of the marginal sea were so closely related to political sovereignty as to be united with it. It therefore held that the property interests in the resources of the marginal sea were included in that sovereignty which was protected by the equal footing clause. *A fortiori* the width of the belt of territorial waters in which such property interests may be held is covered.

The *Texas* case, and the cases that preceded it, supply the answer to the argument made by the defendants that Alabama has no standing to sue because it is not seeking anything for itself. The Acts of Congress admitting Alabama and the other states to the Union on an equal footing with the original states create a compact between the forty-eight states of the Union. Under this compact the natural resources under the marginal seas are to be the exclusive property of no state, but are to be developed for the benefit of all alike. Alabama's rights under this compact are violated if these natural resources are made available exclusively to the defendant states and it is this violation which it is suing to prevent. In addition, Alabama has a right to equal treatment with the defendant

states with respect to the width of the belt of territorial waters off its shores.

These are the rights which Alabama is suing to vindicate, in the manner contemplated by the Constitution, by an original suit in this Court. In this connection Alabama refers the Court to the discussion of the function of the original jurisdiction of this Court contained on pages 18-24 of its Brief. There it was set forth how the original jurisdiction of this Court was intended to provide a substitute for the means of settling disputes normally available to national states which the states gave up when they joined the Union. None of the objections filed by the defendants contained an answer to the argument that under this rule Alabama is entitled to sue in this Court to set aside actions which would deny its guarantee of equal footing. The defendants seem to suggest that the only course open to Alabama is to follow the defendants in their illegal course of conduct. Such a suggestion is a perversion of the historic role of this Court in suits between states. If accepted, it would substitute unilateral action and self-help for the orderly processes of justice.

B. ALABAMA HAS STANDING AS QUASI-SOVEREIGN AND PARENS PATRIAE.

Alabama is also suing as quasi-sovereign and *parens patriae* to attack the validity of measures which will have an adverse effect on the economic welfare of a substantial number of her citizens. These include measures which the defendant states of Texas, Louisiana and Florida are taking under color of Public Law 31 by which they assert the right to regulate Alabama citizens fishing on the high seas in the area between

three to nine miles off the coast of these defendant states. These also include measures by which all the defendant states, with the acquiescence and support of the individual defendants, propose to divert the royalties obtained from the development of the natural resources involved in this proceeding to the sole benefit of their own citizens, to the exclusion of the citizens of Alabama.

The defendants all argue that Alabama has no standing to sue as quasi-sovereign or as *parens patriae* because the Federal Government rather than Alabama acts as the *parens patriae* of Alabama citizens with respect to the interests involved in this controversy. The defendants base this argument on *Massachusetts v. Mellon*, 262 U.S. 447 (1923). The interest which Massachusetts sought to represent as *parens patriae* was the interest of Massachusetts citizens as Federal taxpayers. Massachusetts, as *parens patriae*, was attempting to contest an expenditure of Federal funds which, it argued, came in part from taxes paid by Massachusetts taxpayers but, for which it was also argued, they would receive no benefit. The Court held that the relationship between these citizens and the Federal Government with respect to the payment of Federal taxes was not a matter with respect to which Massachusetts could act as *parens patriae*.

The interests of Alabama citizens which Alabama seeks to protect as *parens patriae* are quite different from those involved in *Massachusetts v. Mellon*. They are not rights which grow solely from their status as citizens of the United States. The right of Alabama citizens not to be excluded from the benefits of the natural resources involved, in this proceeding by the diversion of the royalties from these resources to the

sole benefit of the citizens of the defendant states is not a right which flows solely from the relationship of these Alabama citizens and the Federal Government. This is a right which flows from the compact between Alabama and the other forty-seven states, including the defendant states, that each of them should stand on an equal footing with respect to the resources of the marginal sea. The right of Alabama citizens to fish on the high seas in the area from three to nine miles off the coasts of Texas, Louisiana and Florida is not a right which flows solely from the relationship of these Alabama citizens in the Federal Government. This is a right which flows from the relationship between Alabama and the defendant states with respect to the width of the belt of territorial waters off their shores. It is a right which Alabama citizens have because they are Alabama citizens. If they were citizens of Texas, Louisiana or Florida, their situation would be quite different. *Skiriotes v. Florida*, 313 U.S. 69 (1941).

Alabama, moreover, is not asserting any interest as quasi-sovereign and *parens patriae* against the Federal Government. Alabama, as quasi-sovereign and *parens patriae* is asserting an interest against the defendant states. As pointed out in its original Brief, Alabama has joined the individual defendants in this suit because of their proposed acquiescence and cooperation in the unlawful claims of the defendants in any rights which they are claiming on behalf of the Federal Government.

It is thus clear that if any government is to act as *parens patriae* to assert the rights here in question on behalf of Alabama citizens, it must be the Government of the State of Alabama, not the Federal Government. The defendants attempt to answer this by urging the

adoption of a sweeping rule that no state, suing as *parens patriae*, can ever attack the constitutionality of a Federal statute. This argument should be quickly rejected.

In the first place the Court, in *Massachusetts v. Mellon*, expressly disavowed such an intention by its statement: "We need not go so far as to say that a state may never intervene by suit to protect its citizens against any form of enforcement of unconstitutional acts of Congress; but we are clear that the right to do so does not arise here." (262 U.S. at 485.)

In the second place, this Court has recognized the standing of a state suing as quasi-sovereign and as *parens patriae* to contest the constitutionality of a Federal statute. It did so in *Missouri v. Holland*, 252 U.S. 416 (1920), and it did so in *Hopkins Savings Association v. Cleary*, 296 U.S. 315 (1935), a case in which *Missouri v. Holland* was cited with approval. That case involved the constitutionality of a Federal statute which authorized the conversion of state building and loan associations, organized under state law, to Federal associations. The state brought suit to question the constitutionality of the statute as quasi-sovereign and *parens patriae*, claiming that it was necessary for it to do so to protect "non-vocal" creditors of the state associations who, it was contended, might find themselves in a worse position after the conversion than before. There is no question but that the case involved a suit by a state, as quasi-sovereign and *parens patriae*, for the purpose of attacking the constitutionality of a Federal statute. Yet this Court held that there was standing to sue. The cases which were cited to support this proposition included *Missouri v. Holland*, *Pennsylvania v. West Virginia*, 262

U.S. 553 (1923), and *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907), all leading cases as to the authority of a state to bring suit as quasi-sovereign and *parens patriae*.

Finally, any such rule as that urged by the defendants would be inconsistent with the principles which have been followed since *Marbury v. Madison*, 1 Cranch 137 (1803), under which this Court, in considering controversies before it, considers all the law before it, including the Constitution of the United States. The principles of judicial review which have been followed since that case make it clear that if a state, in the course of asserting an interest as quasi-sovereign or as *parens patriae* which it is proper for it to assert, finds that a Federal statute is involved whose constitutionality is in question, it can challenge it and the Court will deal with it.

III. ALABAMA'S COMPLAINT STATES A CAUSE OF ACTION.

The defendant states have limited the arguments in their objections to Alabama's Motion to attacks on Alabama's standing to question the constitutionality of Public Law 31 and action taken under it. In their objections to Alabama's Motion they have not directly challenged Alabama's arguments that Public Law 31, and acts taken under it, are in violation of constitutional guarantees. The individual defendants, however, have advanced a separate ground for denying Alabama leave to file its Complaint, the argument that Public Law 31 and certain action to be taken under it by the various defendants are constitutional.

Two principal arguments are advanced by the individual defendants. The first relates to all the natural resources involved in this suit. The second relates to

the natural resources between three and nine miles off the shores of the defendants Texas, Louisiana and Florida. The argument of the defendants concerning these resources amounts merely to an assertion that the guarantee of equal footing does not include equality as to the width of the marginal sea. This is an argument which has already been dealt with in Alabama's original Brief and in the portion of this reply brief which relates to standing to sue.

With respect to all the natural resources involved in this suit, including those within three miles off the shores of the defendant states, the individual defendants argue that Public Law 31 is a disposition by Congress of Federal property, and that the power of Congress to dispose of Federal property is unlimited and not subject to judicial review. Thus the Opposition of Defendants Humphrey, *et al.* states (p. 22): "this Court has repeatedly recognized that the interest of the United States in its property is subject to the Government's *absolute* power of disposal." (Emphasis supplied.) Such an assertion of absolute and unqualified power finds no recent parallel in history, with the possible exception of the claims of an unlimited presidential power made by the Government and rejected by this Court in the recent *Steel Seizure* case, *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If accepted it would make of the property clause a reservoir of power far greater than that given any branch of the Government by any other provision of the Constitution. If accepted, it would undermine our constitutional system of checks and balances, of which judicial review is an integral part. An attempt is made to back up this statement by a hyper-literal reading of a series of dicta of this Court, all of which,

when read in context, amount to no more than the statement that the congressional power to dispose of property includes the authority of Congress to make necessary and proper regulations to see that disposition is carried out in a manner which protects the public interest and is consistent with the general principles of our constitutional system. This assertion of an unlimited and unreviewable power is made notwithstanding the fact that this Court, in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936), has decided the question whether a particular disposition of Federal property was authorized by the property clause and has set forth the following criteria which should guide such a review: (297 U.S. at 338)

"The constitutional provision is silent as to the method of disposing of property belonging to the United States. That method, of course, must be an appropriate means of disposition according to the nature of the property, *it must be one adopted in the public interest as distinguished from private or personal ends*, and we may assume that it must be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States. . . ." (Emphasis supplied.)

Under the decision of this Court in the *Ashwander* case, therefore, action by the Congress under the property clause is not absolute. It is subject to review by the Court according to the criteria which were set forth and applied by the Court in the *Ashwander* case itself. In the closely analagous case of *Illinois Central R. Co. v. Illinois*, 146 U.S. 387 (1892), the Court held that a particular disposition of state property by a

state legislature was revocable as an invalid exercise of a public trust. The individual defendants attempt to distinguish this case on three grounds. First, they state that it involves merely a question of state law, without any constitutional significance.¹¹ Second, they argue that the *Illinois Central* case involved a grant to a private corporation while the present case involves a grant to certain states.¹² Third, they argue that the *Illinois Central* case goes merely to the point of whether Public Law 31 is sufficiently defective so that a later Congress may revoke it on the theory that no vested rights could accrue under it, not to the point of whether it is void on its face.¹³

The individual defendants base the first of their arguments—that the *Illinois Central* case only decided a question of state law—upon the following statement: “The conclusion reached in *Illinois Central Railroad v. Illinois*, 146 U.S. 387, ‘was necessarily a statement of Illinois law’ (*Appleby v. City of New York*, 271 U.S. 364, 395), . . .”¹⁴ The quotation of this phrase from *Appleby v. City of New York* would have been more enlightening had it included the entire sentence of which it was a part. The entire sentence reads as follows: (271 U.S. at 395.)

“That case (*Illinois Central* case) arose in the Circuit Court of the United States, and the conclusion reached was necessarily a statement of Illinois law, but the general principle and the exception have been recognized the country over and

¹¹ Opposition of Defendants Humphrey, et al., pp. 25-26.

¹² Id., pp. 28-30.

¹³ Id., pp. 26-27.

¹⁴ Opposition of Defendants Humphrey, et al., p. 26.

have been approved in several cases in the State of New York." (Parenthesis and emphasis supplied.)

The failure of *Appleby v. City of New York* to support the position of the individual defendants is shown by the description by the Court in that case of the decision in the *Illinois Central* case, a description which supports the weight which Alabama has placed on the *Illinois Central* case. In *Appleby v. City of New York* the Court stated that in the *Illinois Central* case:

"... the validity of a grant by the Illinois legislature to the Illinois Central Railroad Company of more than 1,000 acres, in the harbor of Chicago in Lake Michigan, was under consideration. It was more than three times the area of the outer harbor, and not only included all that harbor, but embraced the adjoining submerged lands which would in all probability be thereafter included in the harbor. It was held that it was not conceivable that a legislature could divest the State of this absolutely in the interest of a private corporation, that it was a gross perversion of the trust over the property under which it was held, an abdication of sovereign governmental power, and that a grant of such right was invalid. . . ."
(271 U.S. at 393.)

The decision in the *Illinois Central* case was therefore not merely a decision on Illinois law. It was based on a general principle of constitutional law, applicable to state and Federal governments alike.

The second argument by which the individual defendants attempt to distinguish the *Illinois Central*

case—that it involved a private corporation—is equally unpersuasive. A state is no more entitled to benefit from a breach of trust than is a private corporation. In the *Illinois Central* case the property was held in trust for the people of Illinois. The transfer of the property to the Illinois Central Railroad was held a breach of that trust because it did not adequately take into account the interests of *all* the people of the State of Illinois. In the present case the United States holds its paramount rights in the lands and resources of the marginal seas which are the subject of this suit in trust for *all* the people of the United States. - See *United States v. California*, 332 U.S. 19, 40 (1947). Yet Public Law 31 seeks to dispose of these lands and resources solely for the benefit of the four defendant states, to the exclusion of the other states of the Union and their citizens, including Alabama and its citizens.

The statement of the chief sponsors of this legislation, as well as the circumstances which gave rise to it, was not an exercise of a trust for the benefit of *all* the people of the United States. Indeed, the very purpose of Public Law 31 was to nullify the principle established by this Court in the *California*, *Louisiana* and *Texas* cases, according to which the submerged lands and resources here involved were held to be subject to a trust for the benefit of the United States. A trustee is entitled to great latitude in exercising his discretion in carrying out a trust. He is entitled to no latitude at all when he refuses to recognize its existence.

Little consideration need be given to the third argument by which the Government attempts to distinguish the *Illinois Central* case—that it merely relates to the problem of whether Public Law 31 is voidable by some

subsequent Congress, not to whether it is void. Clearly had the original transfer involved in the *Illinois Central* case not been void, the attempt to revoke them would have been a violation of the contract clause.

IV. THE UNITED STATES IS NOT AN INDISPENSABLE PARTY.

Briefs submitted by three of the defendants argue that the United States is an indispensable party to the suit, which must therefore fail, since the United States has not consented to be sued.¹⁵ This point is given rather different meanings by the respective defendants' papers.

California, Florida and Texas argue, in the main, that the United States is an indispensable party because Alabama seeks an adjudication of rights and responsibilities of the Federal Government under Public Law 31. The opposition of the individual defendants asserts that the relief prayed for against these individuals is actually required of the sovereign, affecting its property, thus raising the same issue.

Alabama's Complaint and prayer are explicit that no relief is sought that requires any affirmative action of the Federal Government or its officers with respect to the funds, lands and natural resources involved in the suit. What is sought with respect to the lands and natural resources is an injunction against the defendant states to stop assertions of "ownership, full dominion and power over, and the exclusive jurisdiction and control over" these resources,¹⁶ and an injunction against the individuals in effect to restrain

¹⁵ Opposition of Defendants Humphrey, et al., p. 33; Objections of California and Florida, p. 34; Objections of Texas, p. 18.

¹⁶ See paragraphs 5 and 7 of Alabama's prayer for relief.

their turning over control of these resources to the defendant states." With respect to the accrued rents and royalties (in the custody of the individuals, the prayer asks that the individuals be enjoined from paying over the funds to the defendant states, an act which would deprive Alabama and its citizens of any possible benefit from these funds."

No burdens upon the machinery of government are involved in the prayer for relief. No adjudication of the Government's property interests adverse to the Federal Government are prayed for. The nature of this interest has, in fact, thrice been adjudicated in *United States v. California*, 332 U.S. 19 (1947); *United States v. Texas*, 339 U.S. 707 (1950); *United States v. Louisiana*, 339 U.S. 699 (1950). Alabama seeks to restrain interferences with the equitable interest which it and its citizens have in the properties subject to the paramount jurisdiction and control of the Federal Government. It is met by the claim that, as a result of Public Law 31, the Federal Government no longer has paramount jurisdiction and control over the properties but that the exclusive property interest in the lands and resources is in the defendant states. The Act of Congress here under attack, Public Law 31, is not in issue because of any contention that it is the basis on which the Federal Government asserts jurisdiction and control. Public Law 31 is under attack because it is the sole basis on which the defendant states assert exclusive property interests in the lands and resources here involved, to the exclusion of the interest of Alabama and its citizens which is derived

¹⁷ See paragraph 6 of Alabama's prayer for relief.

¹⁸ See paragraph 4, of Alabama's prayer for relief.

from the paramount jurisdiction and control of the Federal Government.

The defendant states make the additional argument, in effect, that the United States is an indispensable party because they claim their property interests through grant from the United States." However, this argument overlooks the fact that Alabama is not attacking the paramount jurisdiction and control of the Federal Government and is seeking no affirmative relief from the Federal Government. Therefore the case falls within the rule that in a suit against a grantee to try property rights, the grantor is not only not an indispensable party, but is not even a proper party. *Laidly v. Huntington*, 121 U.S. 179 (1887). The various defendants attempt to bolster this argument by pointing out that the validity of an Act of Congress is in issue. As Texas puts it, it is urged that the suit involves "a challenge to the authority of the United States".³⁰ This is an argument which strikes at the whole foundation of judicial review and flies in the face of the doctrines enunciated by this Court in *Marbury v. Madison*, 1 Cranch 137 (1803), and *Ex parte Young*, 209 U.S. 123 (1908).

In fact, the very nature of Alabama's claim, that Public Law 31 is unconstitutional and that action taken under color of it is therefore null and void, is one of the primary reasons why it is clear that this suit is not a suit against the Government. This Court recently had occasion to review the precedents on the

²⁹ Objections of Texas, p. 19; Objections of California and Florida, p. 34.

³⁰ Objections of Texas, p. 18; Objections of California and Florida, p. 34.

issue of sovereign immunity in the case of *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682 (1949). After so doing it announced its adherence to the rule that:

"... the action of an officer of the sovereign (be it holding, taking or otherwise legally affecting the plaintiff's property) can be regarded as so 'illegal' as to permit a suit for specific relief against the officer as an individual only if it is not within the officer's statutory powers or, if within those powers, only if the powers, or their exercise in the particular case, are constitutionally void." (337 U.S. at 701-702.)

Notwithstanding this clear indication of the attitude of the Court, the individual defendants characterize the prayer for relief as "an attempt to interfere with official conduct in the management of governmental property",²¹ and cite numerous cases to support this characterization, and the claim which they make based upon it, that the Government must be impleaded. The indiscriminate reliance by the individual defendants on a number of cases in an attempt to sustain this vague proposition, necessitates a brief analysis of the principal cases and the reasons why they are not applicable to the case at bar.

In *Belknap v. Schild*, 161 U.S. 10 (1896), the bill prayed for an injunction against continued use of a patented caisson gate, and for its destruction. The caisson gate was naval property of the United States, used by the United States as part of a dry dock in a U.S. Navy Yard. The Court said:

²¹ Opposition of Defendants Humphrey, et al., p. 36.

"Although this suit was not brought against the United States by name, but against their officers and agents only, nevertheless, so far as the bill prayed for an injunction, and for the destruction of the gate in question, the defendants had no individual interest in the controversy; the entire interest adverse to the plaintiff was the interest of the United States in the property of which the United States had both the title and possession; ..." (161 U.S. at 25.)

In the case at bar no comparable relief is proposed. Alabama makes no effort to reach, destroy, or compel conveyance or restrict the use by the Government of any property of the United States. Alabama is asserting no interest adverse to the United States. *Minnesota v. Hitchcock*, 185 U.S. 373 (1902), is even more inapposite because its holding results directly from an Act of Congress establishing a special interest of the United States in the subject matter of the suit. That case involved a suit by the State of Minnesota against the Secretary of the Interior claiming title to some lands held by the United States and administered by the Secretary of the Interior as an Indian Reservation. A Federal statute specifically authorized the suit but the statute was attacked as unconstitutional. The Court upheld the statute as being within the judicial power of the United States as that power is defined in Article III of the Constitution. The individual defendants' opposition omits to mention either the existence of this Act or its effect on the holding. That holding is misrepresented if the statute is ignored.

Naganab v. Hitchcock, 202 U.S. 473 (1906), is one of the cases which the individual defendants say are "indistinguishable in principle from the one at bar".²³ Yet in a respect vital to the ground of decision the case is not only distinguishable, but is actually opposed to the position taken by the individual defendants. Suit was brought in that case, not to prevent the repudiation of a trust, but to litigate the manner in which the trust should be performed. The relief prayed for was that the Secretary of the Interior "be required to execute the trust in favor of the Indians, and account to the complainant as required by the act of January 14, 1889, ..." (202 U.S. at 475.) Affirmative action, necessarily that of the Government, was the proposed relief. In contrast, Alabama asks, not that the Government do something, but that the defendant states cease their assertions of authority and exclusive property rights, and that the defendant individuals be forbidden to turn over control of the natural resources to the defendant states.²⁴ Although defendants Humphrey, *et al.* portray this prayer as requiring that the individual defendants actively oppose the claims of the defendant states,²⁵ all that Alabama wants is that the individuals be forbidden to take affirmative steps to perfect the control sought by the defendant states over the property. With respect to the escrow funds Alabama similarly seeks only total passivity of the individuals. The interest of Alabama in the funds may be entirely preserved without any affirmative act

²³ Opposition of Defendants Humphrey, *et al.*, p. 35.

²⁴ This is the acquiescence sought to be restrained by paragraph 6 of the prayer for relief.

²⁵ Opposition of Defendants Humphrey, *et al.*, Fn. 12, p. 36.

of the individual defendants named in the Complaint. In fact, Alabama recognizes that these defendants could take no affirmative action to pay funds over to Alabama without further action by Congress. All that is asked now is that the funds should not be dissipated.

It is on *Morrison v. Work*, 266 U.S. 481 (1925), that the individual defendants place their principal reliance.²⁸ They say, "In principle, the case at bar is in no way distinguishable from the *Morrison* case, and the holding must be the same."²⁹ It is, however, distinguishable on the fundamental ground that *Morrison* brought suit to regulate the manner in which the trust was performed by the Government. The United States was performing the trust along the lines fixed by later statutes. *Morrison* sued to enjoin this mode of execution of the trust on the ground that the later statutes were unconstitutional, and the inevitable result of injunctive relief asked would have been to require performance according to the earlier statutory scheme. The Court said through Justice Brandeis:

"Each Complaint relates to some change made either in the method of managing and disposing of the ceded lands or in the disposition of the proceeds thereof." (266 U.S. at 485.)

In the case at bar Alabama does not attempt to prescribe how the trust shall operate. The claim is that the trust has been repudiated by action proposed to be taken by the individual defendants. Defendants can point to no place in Alabama's Complaint or Brief at which any assertion is made of the proper

²⁸ Opposition of Defendants Humphrey, et al., pp. 38-41.

²⁹ Id., p. 41.

mode of trust administration. Alabama asserts only that the individual defendants, in acting to repudiate the trust, act under no valid authority. With respect both to the accrued rents and royalties and the natural resources, no action of the four individual defendants is sought, and none is necessary. The sovereign, therefore, is not implicated. *Ickes v. Fox*, 300 U.S. 82 (1937).

The Opposition of Defendants Humphrey, *et al.* makes an effort to distinguish *Land v. Dollar*, 330 U.S. 731 (1947), from the case at bar by quoting from the opinion of the Court the statement that the situation with which the Court was dealing in that case was not one:

"... where the sovereign admittedly has title to property and is sued by those who seek to compel a conveyance or to enjoin disposition of the property, the adverse claims being based on an allegedly superior equity or on rights arising under Acts of Congress."²⁷ (330 U.S. at 737-738)

Alabama's interest in the funds and resources does not arise under an Act of Congress but, in the terms of the Complaint, from constitutional rights. The equity of Alabama is not claimed to be adverse or superior to any interest of the United States. Alabama has alleged an interest which is similar to that in all the states, and adverse only to the exclusive interest claimed by defendant states.

Distinctions borrowed from *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682 (1949), are set forth at length by the individual defendants, and the situation at bar is characterized to fit.²⁸ A full review

²⁷ Opposition of Defendants Humphrey, *et al.*, quoted p. 35.

²⁸ Opposition of Defendants Humphrey, *et al.*, pp. 33-34, 36.

of the law on this point, however, is available from the majority opinion by Chief Justice Vinson and in the dissent of Justice Frankfurter. As the late Chief Justice states the law, the general rule is that the suit is not directed against the sovereign when "the statute or order conferring power upon the officer to take action in the sovereign's name is claimed to be unconstitutional." 337 U.S. 690. The exception to this is when relief requested "cannot be granted by merely ordering the cessation of the conduct complained of but will require affirmative action by the sovereign or the disposition of unquestionably sovereign properly", [citing *North Carolina v. Temple*, 134 U.S. 22 (1890)].²⁹ 337 U.S. 691, fn. 11. In this statement he is in complete accord with Justice Frankfurter, who states, in his dissent:

"The matter boils down to this. The federal courts are not barred from adjudicating a claim against a governmental agent who invokes statutory authority for his action if the constitutional power to give him such a claim of immunity is itself challenged. Sovereign immunity may, however, become relevant because the relief prayed for also entails interference with governmental property or brings the operation of governmental

²⁹ *North Carolina v. Temple* does not, as Justice Frankfurter points out in his dissenting opinion, qualify the principle of the cases relied upon by Alabama:

"Regard for the facts of these cases brings them within the first category because the nature of the relief requested makes them either cases in which Government property would have to be transferred, or cases where the persons sued could satisfy the court decree only by acting in an official capacity."
337 U.S. 713.

machinery into play. The Government then becomes an indispensable party and without its consent cannot be implicated. . . ." (337 U.S. at 715.)

Thus both are agreed that a suit such as the case at bar does not implicate the sovereign unless the complainant seeks a disposition or transfer of sovereign property or requires acts that only the sovereign can do.

Alabama is not seeking a conveyance of Government property or money. It is seeking that property subject to the paramount jurisdiction and control of the Federal Government and money derived from such property *not* be turned over to Texas, California, Louisiana and Florida.

Alabama does not pray that any use of public property by Government officials for public benefit be regulated or altered. It prays that Government officials *not* take steps which will make any such use impossible.

Alabama does not pray for any affirmative act on the part of Government officers. The action threatened by the individual defendants will be an affirmative series of acts turning funds over to three defendant states and the actual releasing of control to the four defendant states of the natural resources involved in this proceeding. Alabama asks this action *not* be taken.

Alabama urges that in this case the proper way to determine against whom relief will operate, and whether validity of authority is in issue, is from the allegations and prayers contained in the Complaint. While Alabama does not believe it is necessary in this case to postpone determination of the questions of whether the United States is an indispensable party until consideration of the merits, Alabama is not averse

to proceeding in that fashion. In any case, it could not now be decided that the Government is an indispensable party, thus causing leave to file the Complaint to be denied. Normally, the absence of authority of the defendants, and presence of injury on the part of the plaintiff must, if alleged, be assumed at this stage of the case. No reason is apparent or alleged by defendants why any departure from the normal rule is necessary here. *Ickes v. Fox*, 300 U.S. 82, 96 (1937).

CONCLUSION

Wherefore, it is respectfully submitted that motion for leave to file this complaint be granted and that, upon hearing, the relief prayed for in the complaint be granted.

Respectfully submitted,

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SUBJECT INDEX

	Page
PRELIMINARY STATEMENT _____	2
FIRST OBJECTION	
The Complaint Does Not State A Case Or Controversy Within The Jurisdiction Of This Court _____	2
The Complaint Presents Nothing More Than An Abstract Question Of International Political Power _____	2
Alabama Has No Standing In Its Sovereign Capacity To Question The Constitutionality Of Public Law 81 _____	8
Alabama Is Without Standing To Question The Constitutionality Of Public Law 81 On Behalf Of Its Citizens _____	11
Insofar As The Complaint Relates To The Fishing Rights Of Alabama Citizens, It Presents No Controversy Between Alabama Or Its Citizens And The State Of Texas _____	15
SECOND OBJECTION	
Alabama's Action Is In Substance And Effect Against The United States And, Consequently, The United States Is An Indispensable Party _____	18
CONCLUSION _____	19

TABLE OF AUTHORITIES

Cases	Page
Alabama v. Arizona, 391 U.S. 394	17
Arizona v. California, 398 U.S. 423	17
Chicago & S. Air Lines, Inc. v. Waterman Steamship Corp., 398 U.S. 160	4, 7
Coleman v. Miller, 397 U.S. 423	7
Dehard v. State, 169 Tex. 331	16
Florida v. Mallon, 373 U.S. 12	12
Foster v. Mallon, 2 Fed. 252	4
Frothingham v. Mallon, 393 U.S. 467	9
Garcia v. Lee, 12 Fed. 211	5
Georgia v. Pennsylvania R.R., 234 U.S. 459	13, 18
Georgia v. Stanton, 6 Wall. 50	7
Hopkins Savings Ass'n v. Cleary, 396 U.S. 315	14
In re Cooper, 148 U.S. 372	6
Jones v. United States, 137 U.S. 202	6
Louisiana v. Garfield, 311 U.S. 76	19
Louisiana v. Mahalia, 394 U.S. 627	19
Massachusetts v. Mallon, 393 U.S. 467	7, 11, 15
Massachusetts v. Missouri, 398 U.S. 1	8
Minnesota v. United States, 395 U.S. 222	19
Missouri v. Holland, 393 U.S. 416	14
Missouri v. Illinois, 399 U.S. 495	17
Nebraska v. Wyoming, 395 U.S. 529	17
New York v. New Jersey, 394 U.S. 234	17
Oregon v. Hitchcock, 392 U.S. 60	19
Steed v. Dodgen, 85 F. Supp. 954	16
Terlinden v. Ames, 184 U.S. 270	7

TABLE OF AUTHORITIES

iii

	Page
The Chinese Exclusion Case, 130 U.S. 581	7
United States v. Arrendondo, 6 Pet. 691	5
United States v. California, 332 U.S. 19	6, 8, 10
United States v. Lynde, 11 Wall. 632	5
United States v. Reynes, 9 How. 127	5
United States v. San Francisco, 310 U.S. 16	11
United States v. Texas, 143 U.S. 621	6
United States v. Texas, 339 U.S. 707	10
Wilson v. Shaw, 204 U.S. 24	7
Z. & F. Assets Realization Corp. v. Hull, 311 U.S. 470	6, 7

Statutes

P.L. 81, Ch. 65, 83rd Cong., 1st Sess., 1953	2
Acts 51st Leg., Reg. Sess., Ch. 68, § 12	16
Art. 934a, Vernon's Penal Code of Texas	16
Art. 934b-1, Vernon's Penal Code of Texas	16
Art. 934b-2, Vernon's Penal Code of Texas	16

Miscellaneous

Field, 8 Minn. L. Rev. 485	7
Weston, 38 Harv. L. Rev. 296	7

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original

STATE OF ALABAMA,
Complainant

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF
FLORIDA; STATE OF CALIFORNIA; GEORGE M.
HUMPHREY; DOUGLAS MCKAY; ROBERT B. AN-
DERSON; IVY BAKER PRIEST.

MOTION FOR LEAVE TO FILE OBJECTIONS

The State of Texas, by its Attorney General, asks leave of the Court to file its objections to the motion filed herein by the State of Alabama for leave of this Court to file its complaint against the State of Texas, the State of Louisiana, the State of Florida, the State of California, George M. Humphrey, Douglas McKay, Robert B. Anderson, and Ivy Baker Priest, which complaint is submitted therewith.

JOHN BEN SHEPPERD
Attorney General of Texas

PRELIMINARY STATEMENT

The State of Texas appears here for the sole purpose of objecting to the motion of the State of Alabama for leave to file complaint.

The first objection presented herein is directed to the point that the complaint which Alabama seeks leave to file presents no case or controversy within the jurisdiction of this Court for the reasons that (1) the complaint presents nothing more than an abstract question of international political power; (2) Alabama is without standing to sue in its sovereign capacity or in the capacity of quasi-sovereign or *parens patriae*; and (3) the complaint, insofar as it relates to the fishing rights of Alabama citizens, presents no controversy between Alabama or its citizens and the State of Texas.

The second objection is that leave to file the complaint should be denied because of the absence of the United States as a party.

FIRST OBJECTION

**The Complaint Does Not State a Case or Controversy
Within the Jurisdiction of This Court**

*The Complaint Presents Nothing More
Than An Abstract Question of
International Political Power*

Alabama's principal argument is founded entirely upon alleged unequal treatment of Alabama *vis-a-vis* Texas, Louisiana, and Florida under Public Law 31, Chapter 65, 88rd Congress, First Session, 1953.

Alabama affirmatively states that its boundaries "extend only three nautical miles beyond low water mark on its coast." (Br., p. 17.) The complaint then alleges that the United States Government has determined three nautical miles as the permissible width of this belt pursuant to a rule of international law and that "this rule is binding equally" on Texas, Louisiana, and Florida. (Comp., II XI, XIV, XVII.) And, in this connection, Alabama prays that Public Law 31 be declared void insofar as it attempts to confer on Texas, Louisiana, and Florida any rights in "the maritime belt lying seaward between three and nine nautical miles from the ordinary low water mark." (Comp., p. 29, "3".)

Thus, by its own argument Alabama illustrates the connection of this subject matter with international relations and acknowledges that the "Government of the United States" is responsible for determining questions pertaining thereto. Indeed, an important part of Alabama's contention appears to be the anomalous idea that the political departments of the federal government, which have exclusive power over foreign relations, are powerless to determine the policies of the United States with respect to the natural resources in and under the marginal sea.*

*Alabama's complaint and supporting brief consistently treat the natural resources affected by Public Law 31 separately from the moneys heretofore impounded by federal officials from the proceeds of leases covering the same natural resources. But the legal nature of these "escrow" moneys in no way differs from the legal nature of the resources themselves. Had there been no production, title to the resources now represented by the impounded moneys would have passed under Section 3(a) of the Act. Hence, no analytical advantage can be served by considering these moneys separately from the resources themselves.

Texas submits that Alabama's argument relating to the width of the territorial belt affected by Public Law 31 is, in the last analysis, a naked challenge to the authority of the Congress and the President to conduct foreign affairs, an incident of which is the determination of national boundaries, whether for the limited purposes involved in Public Law 31 or for all purposes. As such it presents a "political" rather than a judicial question.

This Court has so reasoned in a great variety of cases, one group of which is represented by *Foster v. Neilson*, 2 Pet. 253 (1829). In that case each party asserted a title to the same tract of land in Louisiana, the plaintiff alleging a title based on a Spanish grant during 1804. The defense was that such Spanish grants were void due to the fact that Spain had ceded the entire area between the Perdido and Iberville Rivers to France by the Treaty of St. Ildefonso (by which Spain had ceded Louisiana to France) and that this disputed area was acquired by the United States from France in the Louisiana Purchase in 1803. The meaning of the crucial provision of the Treaty, which controlled the lawsuit, was conceded by the Court to be ambiguous and was recognized by the Court to have been the subject of a lengthy dispute between the governments of Spain and the United States, the Spanish construction favoring plaintiff and the American construction favoring defendant.

In affirming a dismissal of the suit, Chief Justice Marshall pointed out that

"In a controversy between two nations concerning national boundary, it is scarcely possi-

ble that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they cannot adjust their differences peaceably, the right remains with the strongest. The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided ..." (2 Pet. at 307.)

And, after observing the various congressional acts respecting the disputed area, the Court added:

"... If those departments which are intrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its rights of dominion over a country which is in its possession, and which it claims under a treaty; if the legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this respecting the boundaries of nations is, as has been truly said, more a political than a legal question; and in its discussion, the courts of every country must respect the pronounced will of the legislature." (*Id.* at 309.)

Subsequent decisions reiterate that national boundary matters present political questions for the executive and legislative departments and that a determination by these "political" departments is binding on the courts. *United States v. Arredondo*, 6 Pet. 691, 711 (1832); *Garcia v. Lee*, 12 Pet. 511, 516 (1838); *United States v. Reynes*, 9 How. 127, 154 (1849); *United States v. Lynde*, 11 Wall. 632,

643 (1870). Insofar as the political, or non-judicial, nature of national boundary making is concerned, these decisions have been properly distinguished from those relied on by Alabama which involve only questions of internal boundary between states or between a state and the United States. See *United States v. Texas*, 143 U. S. 621, 639 (1892).*

Likewise, this Court in *United States v. California*, 332 U.S. 19, 34 (1947), with reference to the identical international frontier here involved, acknowledged the binding effect upon the judiciary of assertions by the political departments of dominion over the marginal seas and the binding effect of delineations by those departments of the geographical limits of such dominion. The Court's reliance upon the principles approved in *Jones v. United States*, 137 U.S. 202, 212-214 (1890), and *In re Cooper*, 143 U.S. 472, 502-503 (1892), supports Texas' conviction that questions of boundary making in the marginal sea are indistinguishable from foreign relations issues in general and that the determination of all such issues by the political departments conclusively binds the courts and removes those questions from the scope of judicial power delegated by Article III of the Constitution. *Chicago & S. Air Lines, Inc. v. Waterman Steamship Corp.*, 333 U.S. 103, 111 (1948); *E. & F. Assets Realization Corp. v. Hull*, 311 U.S. 470, 490 (1941) (concurring opinion); *Wilson*

*If any further distinction of Alabama's internal boundary cases is required, it should be noted that each of them concerned a boundary of the complaining state—a matter of immediate and special interest to it—whereas, in the present case, Alabama is complaining about certain boundaries of Texas, Louisiana, and Florida—boundaries that have nothing whatever to do with Alabama's jurisdiction.

v. Shaw, 204 U.S. 24, 32 (1907); *Terlindon v. Ames*, 184 U.S. 270, 288 (1902); *The Chinese Exclusion Case*, 130 U.S. 581 (1889). See Field, *The Doctrine of Political Questions In The Federal Courts*, 8 MINN. L. REV. 485, 494-502 (1924); Weston, *Political Questions*, 38 HARV. L. REV. 296, 315-316 (1925).

As if in answer to Alabama's present argument that the former "law of the land" (Br., p. 21) restricted the national boundary in the Gulf of Mexico to three miles and that the Congress may not modify this boundary for any purpose, this Court long ago remarked in the case last cited:

"... The question whether our government is justified in disregarding its engagements with another nation is not one for the determination of the courts." (130 U.S. at 602.)

Moreover, since it is the ultimate responsibility of this Court to determine who may invoke its jurisdiction and under what circumstances, it is well within the Court's power to dismiss for lack of jurisdiction any action before it which presents only a political question. *Chicago & S. Air Lines, Inc. v. Waterman Steamship Corp.*, *supra*; *Massachusetts v. Mellon*, 262 U.S. 447 (1923); *Georgia v. Stanton*, 6 Wall. 50 (1867). See *Coleman v. Miller*, 307 U.S. 433, 456, 460 (1939) (concurring opinions); *Z. & F. Assets Realization Corp. v. Hull*, *supra* at 490 (concurring opinion).

That the Court should exercise judicial self-limitation in this instance and should deny Alabama leave to file is manifest from the action of the Court in respect to analogous political questions discussed above.

***Alabama Has No Standing In Its Sovereign
Capacity To Question The Constitutionality
Of Public Law 31***

That a state as a sovereign has no authority to question the provisions of Public Law 31 relating to the extent of the territorial belt established for the purpose of developing the natural resources in and under the marginal sea was recognized in principle in *United States v. California*, 332 U.S. 19, 35 (1947), where the Court said:

“... whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units.”

Therefore, any rights asserted by Texas under Public Law 31 to the natural resources in and under the portion of the marginal sea within its historic boundaries could not possibly be in derogation of the rights, if any, of the State of Alabama, whatever the nature of the rights claimed by Alabama. The extent of the territorial belt in which Texas asserts its rights to the natural resources is a matter solely between Texas and the federal government. It is submitted, therefore, that no legal rights of Alabama have been invaded by the alleged assertions of Texas.

Under such circumstances it is clear that Alabama's complaint presents no actual controversy for determination by this Court. As stated in *Massachusetts v. Missouri*, 308 U.S. 1, 15 (1939), for there

to be a justiciable controversy "it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence."

Even if it could be said that Alabama has suffered injury by the alleged acts of the State of Texas under Public Law 31, it is apparent that this injury is one that is suffered by Alabama in common with all the states of the Union and therefore affords no basis for the action which Alabama seeks to bring. This principal was established in *Frothingham v. Mellon*, 262 U.S. 447, 488 (1923), where it was said:

"... We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

Alabama argues further that its sovereign interests are adversely affected by the claims of Texas, Louisiana, Florida, and California with respect to the natural resources in and under any portion of the marginal sea. The basis of this additional contention is the idea that national sovereign interests have been actually and improperly delegated to these states by Public Law 31, because it is alleged that national sovereign interests are inseparably tied to and therefore must follow the proprietary interests expressly confirmed in the states by Public Law 31. (Comp., ¶ XXXIV A; Br., pp. 24-26.) This idea appears to be derived from Alabama's construction of this Court's holding in *United States v. Texas*, 339 U.S. 707 (1950). Texas denies that the holding of the Court in that case is properly subject to the construction which Alabama seeks to place upon it.

However, even if the opinion of the Court in the *Texas* case were properly susceptible of that construction, Texas is unable to perceive how this would confer any sovereign capacity to complain on the State of Alabama, a purely local sovereign. Even if it could be said that these property rights in and to the natural resources of the marginal sea are inseparable from the national sovereign, the national sovereign would hold these rights for the benefit of all the people and not for the individual states as such. This was expressly recognized in the opinion of this Court in *United States v. California*, 332 U.S. 19, 40, where, in reference to the identical interests here involved, it was said that "the Government . . . holds its interests here as elsewhere in trust for all the people." Alabama's status as a local sovereign is no way

gives it any standing to bring a suit to enforce rights held for "all the people." Alabama's repeated allegations that these rights are held in trust for "all of the states" as well as "all the people" are without legal precedent and certainly cannot change the nature of the federal government's responsibility, whatever it is. But if there is any such "trust" for "all the people," Congress alone may determine how it shall be enforced and administered. *United States v. San Francisco*, 310 U.S. 16, 29-30 (1940).

*Alabama Is Without Standing To Question
The Constitutionality of Public Law 31
On Behalf Of Its Citizens*

Assuming, *arguendo*, that the requisite injury to Alabama citizens by the enactment of Public Law 31 were established, the State of Alabama would have no standing to enforce rights of its citizens by challenging the constitutionality of the Act. Such an action is precluded by prior decisions of this Court.

In *Massachusetts v. Mellon*, 262 U.S. 447, this Court held that an attack upon the constitutionality of a federal statute by a state on behalf of its citizens is not a "justiciable controversy." There, Massachusetts, asserting that it had standing to bring the suit in its sovereign capacity and also in a capacity of representative or as *parens patriae* of its citizens, sought to challenge the constitutionality of the Maternity Act. In denying the right of Massachusetts to bring the suit, the Court said:

"... But the citizens of Massachusetts are also citizens of the United States. It cannot be

conceded that a State, as *parens patriae*, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof. While the State, under some circumstances, may sue in that capacity for the protection of its citizens - (*Missouri v. Illinois*, 180 U. S. 208, 241), it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." (262 U. S. at 485-486.)

This principle that a state does not have standing to attack the validity of a federal statute on behalf of its citizens was reiterated and strengthened by this Court in *Florida v. Mellon*, 273 U. S. 12 (1927). In that case, Florida sought to attack the constitutionality of a federal inheritance tax law, suing as representative of her citizens. Even though it was pointed out that there were only three states whose citizens could be adversely affected by this federal statute and that there was no way in which Florida could secure the same benefits for her citizens as were given citizens of other states (273 U. S. at 16), the Court said:

"Nor can the suit be maintained by the state because of any injury to its citizens. They are also citizens of the United States and subject to its laws. In respect of their relations with the

federal government "it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." *Massachusetts v. Mellon*, *supra*, pp. 485-486." (273 U. S. at 18.)

Alabama relies heavily upon *Georgia v. Pennsylvania R.R.*, 324 U.S. 439 (1945), in an attempt to escape the application of the principle clearly enunciated in *Massachusetts v. Mellon* and *Florida v. Mellon*. But *Georgia v. Pennsylvania R.R.* did not involve an attack by the State of Georgia on behalf of its citizens upon the constitutionality of a federal statute. In fact, it was just the opposite. There, Georgia was asserting rights based on a federal statute in seeking to protect its citizens from a price-fixing conspiracy, while here Alabama is attacking the validity of a federal statute.

It is significant that in *Georgia v. Pennsylvania R. R.* the Court expressly recognized this distinction between an "attack" upon a federal statute and a suit "based" on a federal statute. In categorizing the cases not within its original jurisdiction and distinguishing the case before it from *Massachusetts v. Mellon* and *Florida v. Mellon*, the Court said:

"... Moreover, *Massachusetts v. Mellon*, and *Florida v. Mellon*, *supra*, make plain that the United States, not the State, represents the citizens as *parens patriae* in their relations to the Federal Government.

"The present controversy, however, does not fall within any of those categories. This is a civil, not a criminal, proceeding. Nor is this a situation where the United States rather than Georgia stands as *parens patriae* to the citizens of Georgia. This is not a suit like those in *Massachusetts v. Mellon*, and *Florida v. Mellon*, *supra*, where a State sought to protect her citizens from the operation of federal statutes. Here Georgia asserts rights based on the anti-trust laws." (324 U.S. at 446-447.)

Unlike *Georgia v. Pennsylvania R.R.*, this suit by Alabama on behalf of its citizens is one in which a state is attempting to protect its citizens from the effect of a federal statute, as was the case in *Massachusetts v. Mellon* and *Florida v. Mellon*. Consequently, this is an attempt by Alabama to represent its citizens in their relations with the federal government. This Alabama cannot do. In regard to these relations, the United States, not Alabama, stands as *parens patriae* to the citizens of Alabama.

Alabama also contends (Br., pp. 39-40) that *Missouri v. Holland*, 252 U. S. 416 (1920), and *Hopkins Savings Ass'n v. Cleary*, 296 U. S. 315 (1935), show that a state has standing as representative of its citizens to challenge the constitutionality of a federal statute. But neither of these cases detracts from nor weakens the clear holdings of *Massachusetts v. Mellon* and *Florida v. Mellon*.

Missouri v. Holland was decided prior to the *Massachusetts* case and was there considered by the Court to be a suit, not on behalf of citizens, but to prevent

an invasion of the right of Missouri to regulate the taking of wild game within its borders. (See *Massachusetts v. Mellon*, *supra* at 482). And in the *Hopkins Savings* case, the Court noted a patent distinction from the facts of the *Massachusetts* case as follows:

"... The ruling [*Massachusetts v. Mellon*] was that it was no part of the duty or power of a state to enforce the rights of its citizens in respect of their relations to the Federal Government. Cf. *Florida v. Mellon*, 273 U.S. 12. Here, on the contrary, the state becomes a suitor to protect the interests of its citizens against the unlawful acts of corporations created by the state itself." (296 U.S. at 341.)

Texas submits that the principle that the United States, not the state, represents citizens in their relations with the federal government has been strengthened, rather than weakened, by subsequent cases, and that Alabama's suit on behalf of its citizens falls squarely within that principle and is controlled by it.

Insofar As The Complaint Relates To The Fishing Rights Of Alabama Citizens, It Presents No Controversy Between Alabama Or Its Citizens And The State Of Texas

Alabama asserts that Texas is requiring Alabama citizens to pay license fees and excise taxes for fishing in the Gulf of Mexico between three and nine nautical miles from the Texas coastline and is threatening Alabama citizens with discriminatory license

fees and with complete exclusion from fishing in this offshore area.*

In support of these contentions, Alabama does not show, or even allege, instances or details. There is only the bare allegation that Texas is now requiring Alabama citizens to pay license fees and excises in the area between three and nine miles seaward from the Texas coastline. The complaint concedes that there is merely a threat with respect to discriminatory fees and taxes and the denial of the privilege of fishing in the three-mile area.

Texas submits that the circumstances presented by these allegations give Alabama no cause to complain. Considered most favorably, the action which Alabama attempts to assert on behalf of its citizens against the State of Texas is premature.

*While Alabama's complaint does not specifically refer the Court to any Texas statute which purports to regulate fishing, on page 5 of Alabama's brief, "Article 934b-1, Vernon's Texas Statutes, 1950 Supplement, 51st Leg." is set forth as being the Texas statute under which Alabama citizens are threatened with denial of the privileges asserted in paragraph XII of the complaint.

Apparently, Alabama is referring to Article 934b-1, Vernon's Penal Code of Texas. This statute was repealed by the Texas Legislature in 1949 (Acts 51st Leg., Reg. Sess., ch. 68 § 12) after the act was held unconstitutional by a three-judge federal court in *Steed v. Dodgen*, 85 F. Supp. 956 (W.D. Tex. 1949).

Simultaneous with its repeal of Article 934b-1, the Texas Legislature enacted Article 934b-2, V.P.C. of Texas. This statute was held invalid by the Supreme Court of Texas in *Dobard v. State*, 149 Tex. 332, 233 S.W. 2d 435 (1950).

Thus, as pointed out in the *Dobard* case, the only other Texas statute in this field is Article 934a, V.P.C. of Texas, enacted in 1933, which is merely a licensing statute applying to residents and non-residents alike.

That a suit between states "should be of serious magnitude, clearly and fully proved" before this Court will take jurisdiction has been emphasized frequently. *Missouri v. Illinois*, 200 U.S. 496, 521 (1906); *New York v. New Jersey*, 256 U.S. 296, 309 (1921). And in *Alabama v. Arizona*, 291 U.S. 286, 291 (1934), the Court said:

"... A State asking leave to sue another to prevent the enforcement of laws must allege, in the complaint offered for filing, facts that are clearly sufficient to call for a decree in its favor."

In that case, Alabama was denied leave to file a complaint in this Court to enjoin the enforcement of statutes of five other states which Alabama contended unlawfully discriminated against products made by prison labor. In holding that the complaint did not show any "direct issue" between Alabama and the defendant states, the Court said:

"... In the absence of specific showing to the contrary, it will be presumed that no State will attempt to enforce an unconstitutional enactment to the detriment of another." (291 U.S. at 292.)

Further, this Court has expressly recognized that a mere potential threat of injury, representing only a possibility of injury in the indefinite future, is no basis for a decree in a suit between states. *Nebraska v. Wyoming*, 325 U.S. 589, 608 (1945); *Arizona v. California*, 283 U.S. 423, 462-464 (1931).

Even if it were assumed, *arguendo*, that Alabama's complaint alleged instances and details and

the existence of an imminently pending threat sufficient to show that Texas was attempting to require Alabama citizens to pay the alleged license fees and excises, and was threatening to exclude such citizens from the area, this Court should not take cognizance of the suit. For, as stated in the dissenting opinion in *Georgia v. Pennsylvania R.R.*, 324 U.S. 439, 473:

"... It has long been settled by the decisions of this Court that a State is without standing to maintain suit for injuries sustained by its citizens and inhabitants for which they may sue in their own behalf. *New Hampshire v. Louisiana*, 108 U.S. 76; *Louisiana v. Texas*, 176 U.S. 1; *Oklahoma v. Atchison, T. & S.F. R. Co.*, 220 U.S. 277, 289; *Oklahoma ex rel. Johnson v. Cook*, *supra*, 395-396; *Jones ex rel Louisiana v. Bowles*, 322 U.S. 707."

Since any Alabama citizens who may be injured by the application of Texas fishing laws could sue on their own behalf, the Court should, under the above principle, refuse a suit by Alabama in their behalf.

SECOND OBJECTION

**Alabama's Action Is in Substance and Effect Against
The United States and, Consequently, The
United States Is an Indispensable Party**

The essence of Alabama's complaint is a challenge to the authority of the United States, under Public Law 31, to dispose of its title and proprietary interest in lands, minerals, and other natural resources

of the marginal sea. All of the relief sought by Alabama directly involves the national sovereign's paramount rights, dominion, and power over this property. Under these circumstances, it is clear that the United States is a real party in interest since the nature of its tenure is controlling.

The Court has consistently held that in deciding whether a suit involving title or property rights is actually one against the United States, the pleadings must be tested by considering whether the relief sought, if granted, would determine rights of the United States. *Oregon v. Hitchcock*, 202 U.S. 60 (1906); *Louisiana v. Garfield*, 211 U.S. 70 (1908); *Minnesota v. United States*, 305 U.S. 382 (1939).

Such being the rule, it is apparent that the United States is the real and substantial defendant in the present case. Since the United States has given no consent in this instance and the complaint would have to be dismissed if permitted to be filed, the Court should deny leave to file the complaint. *Louisiana v. McAdoo*, 234 U.S. 627, 628, (1914).

CONCLUSION

The complaint states no case or controversy within the jurisdiction of this Court since it presents only a political question and fails to show that Alabama has standing to sue either as sovereign or on behalf of its citizens. Furthermore, jurisdiction should not be taken because the United States is an indispensable party and has not been joined.

WHEREFORE, the motion for leave to file the complaint should be denied.

Respectfully submitted,

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WILLIAM H. HOLLOWAY
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PHILLIP ROBINSON
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December, 1953

CERTIFICATE OF SERVICE

I, William H. Holloway, certify that I have served a copy of the foregoing motion for leave to file objections and objections of State of Texas to motion of State of Alabama for leave to file complaint on, the following named individuals by mailing a copy of same to them, postage prepaid, to the following addresses:

Hon. SI Garrett
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Hon. Edmund G. Brown
Attorney General of California
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Hon. Fred S. LeBlanc
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Hon. Richard W. Ervin
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Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
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Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D.C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D.C.

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D.C.

Hon. Herbert Brownell, Jr.
Attorney General of the
United States
Department of Justice
Washington, D.C.

WILLIAM H. HOLLOWAY

State of Texas, County of Travis

Subscribed and sworn to before me this _____
day of December, 1953.

Notary Public in and for said
County and State.

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HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1953

No. M, Original

STATE OF ALABAMA, Complainant

V.

**STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY;
DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER
PRIEST, Defendants.**

**OBJECTIONS OF THE STATE OF LOUISIANA TO THE
MOTION OF THE STATE OF ALABAMA FOR LEAVE
TO FILE COMPLAINT, AND STATEMENT IN SUPPORT
OF SUCH OPPOSITION**

**FRED S. LEBLANC,
Attorney General,
State of Louisiana**

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INDEX

	Page
OBJECTIONS	1
STATEMENT IN SUPPORT OF OBJECTIONS	3
I. Alabama Has No Legal Standing Under Its Complaint to Sue, Either as Sovereign or as Parens Patriae for Its Citizens, With Respect to an Appropriation or Grant of Property by Congress..	3
(A). The Submerged Lands Act is, in effect, an appropriation act and a grant of property by the United States	3
(B). Alabama has no legal standing to attack an Appropriation Act and a grant of Property by the United States	3
1. Alabama has no legal standing to attack an Appropriation Act	3
2. Alabama has no legal standing to attack a Congressional Grant of Property of the United States	7
(C). Alabama has no legal standing in this Court to seek the Vindication of a general public interest	10
(D). Alabama has no "equal footing" rights in regard to an Appropriation or Grant of Property of the United States	11
II. Alabama Is Not The Real Party in Interest. She May Not Sue a Sovereign State, Louisiana, On Behalf of Certain of Her Citizens, in Violation of the Eleventh Amendment	13
III. Alabama's Complaint Fails to Present a Case or Controversy in Any Respect Under Article III of the Constitution	14
IV. Alabama's Complaint Should Be Dismissed for Want of Equity	17
(A). Alabama does not Allege the Absence of An Adequate Remedy at Law	17

	Page
(B). Alabama is Suffering No "Irreparable Injury" With Respect to the Appropriation and Grant of Property	18
(C). There is No Case or Controversy over Boundaries, much less any "Irreparable Injury" concerning them	18
(D). There are Adequate State Remedies Available to Any Alabama Fisherman who might complain of Discrimination	19
(E). Alabama's Complaint does not Allege Facts Showing "Irreparable Injury" to her by Virtue of any "Assertion" of Dominion by Louisiana	19
CONCLUSION	24
APPENDIX—Louisiana Revised Statutes of 1950, Title 47, sections 1575, 1576	25
CERTIFICATE OF SERVICE	26

TABLE OF CASES

Ashwander v. Tennessee, (1935) 297 U.S. 288	6, 10
Burford v. Sun Oil Company, (1943) 319 U.S. 333, note 29	23
California v. Latimer, (1938) 305 U.S. 255	20, 21, 22
Emblem v. Lincoln Land Company, (1902) 184 U.S. 660	8
Georgia v. Pennsylvania Railroad, (1945) 324 U.S. 439	9, 14
Georgia v. Stanton, (1868) 6 Wall. 50, 77	5
Gibson v. Chouteau, (1872) 13 Wall. 99	8
Henrietta Mills v. Rutherford County, (1930) 281 U.S. 121	17
Hopkins Savings Association v. Cleary, (1935) 265 U.S. 315	9
Illinois Central R. Co. v. Illinois, (1892) 146 U.S. 387 ..	9
Irvine v. Marshall, (1858) 20 How. 558	8
Leases of Mineral Lands on Isle Royale, (1846) 4 op. Atty. Gen. 487	8
Light v. United States, (1911) 220 U.S. 523	7
Louisiana v. Texas, (1899) 176 U.S. 1	13

Index Continued

iii

	Page
Massachusetts v. Mellon, (1923) 262 U.S. 447	3, 4, 5, 6, 7, 11
Missouri v. Holland, (1920) 252 U.S. 416	9
New Hampshire v. Louisiana, (1883) 108 U.S. 96	13
Oklahoma v. Atchison, Topeka and Santa Fe Railway Co., (1911) 220 U.S. 277	13, 14
Oklahoma v. Cook, (1938) 304 U.S. 389	13, 14
Pennsylvania v. West Virginia, (1923) 262 U.S. 553 ..	9
Perkins v. Lukens Steel Company, (1940) 310 U.S. 113	6, 11
Stearns v. State of Minnesota, (1900) 179 U.S. 223 ..	11, 12
Terrace v. Thompson, (1923) 263 U.S. 197	17
Toomer v. Witsell, (1948) 334 U.S. 385	19
United States v. California, (1947) 332 U.S. 19	8, 10
United States ex rel. Chapman v. Federal Power Commission, (1953) 345 U.S. 153	9
United States v. Gratiot, 14 Pet. 526	7
United States v. Louisiana, (1950) 339 U.S. 699; 340 U.S. 899	10, 18
United States v. San Francisco, (1940) 310 U.S. 16	7
United States v. State of Texas, (1950) 339 U.S. 707 ..	10, 11
United States v. Wyoming, (1948) 335 U.S. 895	9
Van Brocklin v. Tennessee, (1886) 117 U.S. 151	7

OTHER AUTHORITIES

Constitution of the United States	
Article III	14
Article IV, Sec. 3, cl. 2	7, 8
Eleventh Amendment	13, 14
Louisiana Revised Statutes (1950)	19, 20, 22, 25
Title 47, Section 1575	20, 25
Title 47, Section 1576	20, 22, 25, 26
Title 56, Sections 351, 376, 398, 401, 496 and 500 ...	19, 20
Public Law 31 (The Submerged Lands Act)	3, 10, 11, 15, 16, 18
Swamp Lands Acts, 43 U.S.C. 282	8

Supreme Court of the United States

OCTOBER TERM, 1953

No. 11, Original

STATE OF ALABAMA, *Complainant*

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY;
DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER
PRIEST, *Defendants.*

OBJECTIONS OF THE STATE OF LOUISIANA TO THE MOTION OF THE STATE OF ALABAMA FOR LEAVE TO FILE COMPLAINT. AND STATEMENT IN SUPPORT OF SUCH OPPOSITION

Now comes the State of Louisiana, through its Attorney General, acting pursuant to an order of this Court, dated the twenty-sixth day of October, 1953, permitting the several defendants herein a period of forty-(40) days within which to file objections to this Court, granting leave to the State of Alabama to file complaint, and makes this appearance for the sole and only purpose of opposing the filing of such complaint, and submits the following reasons and statement in support of such opposition:

Alabama has no legal standing under its complaint to sue, either as sovereign or as *parens patriae* for its citizens, with respect to an appropriation or grant of property by Congress.

II.

Alabama is not the real party in interest. She may not sue a sovereign state, Louisiana, on behalf of certain of her citizens, in violation of the Eleventh Amendment.

III.

Alabama's complaint fails to present a case or controversy in any respect under Article III of the Constitution.

IV.

Alabama's complaint should be dismissed for want of equity.

WHEREFORE, the State of Louisiana prays that its objections and opposition to the filing of complaint by the State of Alabama be sustained; that the motion of the State of Alabama for leave to file said complaint be denied; and for all appropriate orders thereunto pertaining.

FRED S. LEBLANC,
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State of Louisiana*

JOHN L. MADDEN,
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STATEMENT IN SUPPORT OF OBJECTIONS

I

ALABAMA HAS NO LEGAL STANDING UNDER ITS COMPLAINT TO SUE, EITHER AS SOVEREIGN OR AS PARENS PATRIAE FOR ITS CITIZENS, WITH RESPECT TO AN APPROPRIATION OR GRANT OF PROPERTY BY CONGRESS.

(A) The Submerged Lands Act is in Effect, an Appropriation Act and a Grant of Property by the United States.

We think it perfectly clear that Public Law 31 (The Submerged Lands Act), is only an appropriation act and a grant of property by the United States.

Thus Section 3, the key section, does two basic things: it (1) quitclaims, in effect, certain lands beneath navigable waters to the States, and (2) appropriates to the States all moneys subject to the control of the United States in escrow, which were paid under State leases. At bottom, therefore, the Act merely quitclaims any interest the United States may have in the property, and appropriates certain moneys held by the United States in escrow.

(B) Alabama Has No Legal Standing to Attack an Appropriation Act and a Grant of Property by the United States.

1. *Alabama has no legal standing to attack an Appropriation Act.*

Alabama, in her lengthy brief, has failed to cite a single authority indicating that she may attack either an appropriation act or a grant of property by the United States, as a sovereign or as *parens patriae*.

On the contrary, her claim that in either capacity she may assail an appropriation act and grant of property by the United States is in the very face of the potent case of *Massachusetts v. Mellon* (1923), 262 U. S. 447. That was also an original suit in this Court. Massachusetts sought to attack the constitutionality of the Maternity Act of

1921, which provided "for an initial appropriation and thereafter annual appropriations" (262 U. S. 478), and Massachusetts claimed that these appropriations cast an unfair burden upon her as an industrial state and would cause her "to lose the share which it would otherwise be entitled to receive of the moneys appropriated", and that the Act was unconstitutional as a violation of the Tenth Amendment.

This Court flatly dismissed the case for *want of jurisdiction*. It held that:

"... the State of Massachusetts presents no justiciable controversy, either in its own behalf or as the representative of its citizens." (262 U. S. 480).

This Court went on further to point out that, at best, only political, not judicial questions were involved, and that *no personal or property right* of Massachusetts had been injured. The Court, among other things, said:

"First. The State of Massachusetts in its own behalf, in effect, complains that the act in question invades the local concerns of the state, and is a usurpation of power, viz. the power of local self-government, reserved to the states.

Probably it would be sufficient to point out that the powers of the state are not invaded, since the statute imposes no obligation *but simply extends an option which the state is free to accept or reject*. But we do not rest here. Under article 3, section 2, of the Constitution, the judicial power of this court extends 'to controversies . . . between a state and citizens of another state' and the court has original jurisdiction 'in all cases . . . in which a state shall be a party'. The effect of this is not to confer jurisdiction upon the court merely because a state is a party, but only where it is a party to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant." (262 U. S. 480). (Emphasis supplied).

"What, then, is the nature of the right of the state here asserted, and how is it affected by this Statute? Reduced to its simplest terms, it is alleged that the statute constitutes an attempt to legislate outside the powers granted to Congress by the Constitution and within the field of local powers exclusively reserved to the states. Nothing is added to the force or effect of this assertion by the further incidental allegations that the ulterior purpose of Congress thereby was to induce the states to yield a portion of their sovereign rights; *that the burden of the appropriations falls unequally upon the several states*; and that there is imposed upon the states an illegal and unconstitutional option either to yield to the federal government a part of their reserved rights or lose their share of the moneys appropriated. *But what burden is imposed upon the states, unequally or otherwise? Certainly there is none*, unless it be the burden of taxation, and that falls upon their inhabitants, who are within the taxing power of Congress as well as that of the states where they reside." (262 U. S. 482). (Emphasis supplied).

"It follows that, in so far as the case depends upon the assertion of a right on the part of the state to sue in its own behalf, we are without jurisdiction. In that aspect of the case we are called upon to adjudicate, not rights of person or property, not rights of dominion over physical domain, not quasi sovereign rights actually invaded or threatened, but abstract questions of political power, of sovereignty, of government." (262 U. S. 484, 485).

And it relied on *Georgia v. Stanton* (1868), 6 Wall. 50, where Georgia sought to enjoin the Secretary of War from carrying into execution certain acts of Congress which, it was claimed, would annul and abolish the existing State governments. That case was also dismissed for want of jurisdiction on the ground that the bill presented "no case of private rights or personal property infringed." (6 Wall. 77).

Also, this Court utterly demolished Massachusetts' argument that she could sue in *parens patriae* or "as the representative of its citizens", saying:

"But the citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a state, as *parens patriae*, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof . . . it is no part of its duty or power to enforce their rights in respect of their relations with the federal government. In that field, it is the United States, not the state, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." (262 U. S. 485).

Alabama does not claim any specific interest in either the funds in escrow appropriated or the property granted to the States, and indeed she has none. The only possible impact that this appropriation and grant can have upon Alabama would be to increase the incidence of federal taxation on her citizens. As pointed out in *Massachusetts v. Mellon*, *supra*, neither Alabama nor any other State has legal standing to complain of the exercise of the taxing power by the United States.

Massachusetts v. Mellon has been repeatedly cited for the proposition that no legal rights of the State were affected by an appropriation act of the United States. See *Perkins v. Lukens Steel Co.* (1940), 310 U. S. 113, 125; and Mr. Justice Brandeis concurring in *Ashwander v. Tennessee* (1935), 297 U. S. 288, 348.

In addition, just as in *Massachusetts v. Mellon*, the statute was held to have "simply extended an option which the state is free to accept or reject" (262 U. S. 480), so here the Submerged Lands Act has simply extended an option to Alabama which Alabama is free to accept or reject. For Alabama is free to accept or reject the quit-claim grant of the Submerged Lands Act. She is thus in a position strikingly similar to that of Massachusetts.

We submit that *Massachusetts v. Mellon* is an insuperable obstacle to the jurisdiction of this Court in this case, which Alabama simply cannot overcome, or pretend does not exist. Alabama's discussion of *Massachusetts v. Mellon* in her brief is wholly inadequate, and fails to come to grips with the issue of jurisdiction.

2. *Alabama has no legal standing to attack a Congressional Grant of Property of the United States.*

Alabama has failed to cite any authority indicating that anybody may judicially attack a congressional grant of property by the United States. She is wholly precluded from making any such attack by Article IV, Section 3, clause 2 of the Constitution, which provides:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;"

No one, sovereign or individual, has ever, with success, judicially attacked a grant of government property by the United States. This delegation of power, in trust to Congress, is exclusive and absolute, and "no state can interfere with this right, or embarrass its exercise." *Van Brocklin v. Tennessee* (1886), 117 U. S. 151, 168. This sweeping congressional power is "without limitations" and

"... 'it is not for the courts to say how that trust shall be administered. That is for Congress to determine.' Thus, Congress may constitutionally limit the disposition of the public domain in a manner consistent with its views for public policy." *United States v. San Francisco* (1940) 310 U. S. 16, 29, 30. *Light v. United States* (1911) 220 U. S. 523, 537; *United States v. Gratiot*, 14 Pet. 526, 527.

Indeed, in *United States v. California* (1947), 332 U. S. 19, this Court said, with respect to the very property now in question:

"For Article IV, Section 3, Cl. 2 of the Constitution vests in Congress 'Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.' We have said that the constitutional power of Congress in this respect is without limitation. *United States v. City and County of San Francisco*; 310 U. S. 16, 29, 30, 60 S. Ct. 749, 756, 757, 84 L. Ed. 1050. Thus neither the courts nor the executive agencies, could proceed contrary to an Act of Congress in this congressional area of national power." (332 U. S. 27).

"But beyond all this we cannot and do not assume that Congress, which has constitutional control over Government property, will execute its powers in such way as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission. See *United States v. State of Texas*, 162 U. S. 1, 89, 90, 16 S. Ct. 725, 754, 40 L. Ed. 867; *Lee Wilson and Co. v. United States*, 245 U. S. 24, 32, 38, S. Ct. 21, 23, 62 L. Ed. 128." (332 U. S. 40). (Emphasis supplied).

Disposition of Government property by grant has always been held to be an appropriate method of congressional disposition, and has never been successfully assailed by a third party. See *Emblen v. Lincoln Land Company* (1902), 184 U. S. 660; *Gibson v. Ghousteau* (1872), 13 Wall. 99; *Irvine v. Marshall* (1858), 20 How. 558; *Leases of Mineral Lands on Isle Royale* (1846), 4 Op. Atty. Gen. 487. Alabama may no more assail this grant of Government property than it may attack a patent issued under the Swamp Land Acts 43 U. S. C. 982, or the many other Congressional acts providing for the issuance of grants to States and individuals.

In addition, a grant by Congress of property previously adjudicated by this Court to be in the United States, has been recognized by this Court as a complete bar to further litigation. In *United States v. Wyoming* (1948), 335 U. S. 895, title to certain real estate had been adjudicated to be in the United States. Congress then passed an Act directing the issuance of a patent to the State of Wyoming for the real estate involved, and the patent was issued. In recognizing the Act of Congress and finally terminating the litigation, this Court stated that "there is no need or requirement for further consideration by this court", (emphasis supplied), saying:

"The claim for damages arose entirely from the possession by the defendant Ohio Oil Company of the land described in said Act of Congress, and its extraction of oil therefrom. Inasmuch as the patent issued by the United States vests title to said land in the State of Wyoming during the entire period of possession by the defendant Ohio Oil Company, there is no need or requirement for further consideration by the Court of plaintiff's demand for a money judgment."

United States v. Wyoming, supra, is a precedent squarely in point and a complete bar to any further litigation over the property. Since such an Act of Congress binds the United States, *a fortiori*, it also binds Alabama.

The cases cited by Alabama, *Georgia v. Pennsylvania RR* (1945, 324 U. S. 439; *Pennsylvania v. West Virginia* (1923), 262 U. S. 553; *United States ex rel. Chapman v. Federal Power Commission* (1953), 345 U. S. 153; *Missouri v. Holland* (1920), 252 U. S. 416; and *Hopkins Savings Association v. Cleary* (1935), 265 U. S. 315, simply do not lend any standing to Alabama to attack an appropriation act or grant of Government property by the United States.

Illinois Central R. Co. v. Illinois (1892), 146 U. S. 387, cannot be of any comfort to Alabama, on the subject of

the absolute control by Congress over Government property. That case did not involve Article IV, Section 3 of the Constitution; and, interestingly enough, it confirms the right of a State to hold lands under navigable waters in trust for its citizens—the very purpose of the Submerged Lands Act.

As we have shown above, the power of Congress to dispose of Government property is absolute and exclusive. Congress may sell it or give it away, as it deems best. No peculiar method of disposition, as by the purchase of transmission lines which was upheld in *Ashwander v. Tennessee*, *supra*, is here involved. An outright grant of Government property is a thoroughly accepted mode of disposition.

Therefore, we need not argue that Congress was wise in quitclaiming or granting the property; Congress has specifically stated in Section 3 of the Submerged Lands Act that ownership of the lands by the states is "in the public interest". It is not for this Court to say otherwise or to supervise the wisdom of Congressional enactments. But we may point out that the decisions of this Court in the *California*, *Louisiana*, and *Texas* cases, to say the least, left conditions in the oil industry and otherwise very unsettled. It is common knowledge that drilling and oil exploration in the marginal sea was brought to a practical standstill as result of those decisions. And the commonly accepted view had been that the States owned the lands and resources under the marginal sea. Thus, we need not belabor the obvious reasons standing out boldly in support of the wisdom of this Congressional legislation, if any were needed.

(C) Alabama Has No Legal Standing in This Court to Seek the Vindication of a General Public Interest.

Both as sovereign and as *parens patriae* for its citizens, Alabama seeks in its complaint to vindicate an interest which complainant itself describes as belonging to all the people.

We have heretofore cited *Massachusetts v. Mellon* as authority for the proposition that a state may not attack an appropriation act of Congress. In that case this Court pointed out the futility of a state seeking judicial redress for an injury suffered in common by people generally and in which the complainant has only some indefinite interest in the relief sought.

Here, Alabama seeks to vindicate a general public interest by asking this Court to construe an act of Congress. The juridical impossibility of such action was clearly stated in *Perkins v. Lukens Steel Company*, *supra*.

(D) Alabama Has No "Equal Footing" Rights in Regard to an Appropriation or Grant of Property of the United States.

The State of Alabama seeks to invoke the jurisdiction of this Court in part on the basis that its sovereign rights are being infringed or placed in jeopardy under the "equal footing" clause of the Constitution of the United States. Complainant's position is largely predicated on the alleged circumstances that defendant States have been given certain economic advantages under the Submerged Lands Act (Public Law 31, 83rd. Congress, 1st Sess.; c. 65), and that the State of Alabama and its citizens are thereby deprived of their asserted share of certain bounties.

The "equal footing" clause applies only to political rights and obligations, not to economic interests. *Stearns v. State of Minnesota* (1900), 179 U. S. 223, 245. Citing with approval the case last mentioned, this Court made the following pronouncement in *United States v. State of Texas* (1950), 339 U. S. 707, 716, to-wit:

"The 'equal footing' clause has long been held to refer to political rights and to sovereignty . . . It does not, of course, include economic stature or standing . . . Area, location, geology, and latitude have created great diversity in the economic aspects of the several states. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty."

The Submerged Lands Act does not create obligations of one state to another but, in addition to the appropriation therein made, constitutes a grant of property by the United States to the several states.

The following statement was made in *Stearns v. State of Minnesota* (179 U. S. 223, 245), to-wit:

"It has often been said that a state admitted into the Union enters therein in full equality with all the others, and such equality may forbid any agreement or compact limiting or qualifying political rights and obligations; whereas, on the other hand, a mere agreement in reference to property involves no question of equality of status, but only of the power of a state to deal with the nation or with any other state in reference to such property. *The case before us is one involving simply an agreement as to property between a state and the nation.*" (Emphasis supplied.

Even if it were possible to apply economic factors to the "equal footing" clause, Alabama could not complain that the Submerged Lands Act, expressly or impliedly, confers any greater benefits on one State than another. When the Submerged Lands Act was adopted, the fact that the State of Louisiana had known oil and gas resources within its maritime belt, while no such discoveries had been made in Alabama's submerged coastal lands, brought about no resulting status of disparity between the two States named. The Act not only had the effect of relinquishing all propriety rights of the United States to the several States, covering lands and the then known resources thereof within the "boundaries" of such States, but it also gave to each State the right of future exploration and development within such areas.

II

ALABAMA IS NOT THE REAL PARTY IN INTEREST. SHE MAY NOT SUE A SOVEREIGN STATE, LOUISIANA, ON BEHALF OF CERTAIN OF HER CITIZENS, IN VIOLATION OF THE ELEVENTH AMENDMENT.

So far as Alabama is suing with respect to commercial and shrimp fishing in the waters of Louisiana, she sues, not on behalf of herself, but in an endeavor to compel Louisiana to respect alleged rights of certain commercial and shrimp fishermen resident in Alabama.

But it is a fundamental rule in original jurisdiction cases that a motion for leave to file a complaint must be denied where the State brings suit on behalf of certain of her citizens and is not the real party in interest. This rule stems from the Eleventh Amendment which prohibits suit by citizens of one State against another State. Thus, a citizen of one State may not sue another State through the camouflage of persuading the State of his residence to sue on his behalf in the original jurisdiction of this Court. *Louisiana v. Texas* (1899), 176 U. S. 1; *New Hampshire v. Louisiana* (1883), 108 U. S. 96.

Nor can a State escape the ironbound prohibition of the rule by "asserting an economic interest." The motion for leave to file must be denied. *Oklahoma v. Cook* (1938), 304 U. S. 389, 394; *Oklahoma v. Atchison, Topeka and Santa Fe Railway Co.* (1911), 220 U. S. 277. Thus in the *Cook* case, Mr. Chief Justice Hughes, speaking for a unanimous Court, said:

"In *Oklahoma v. Atchison, Topeka & Santa Fe Railway Co.*, 220 U. S. 277, 31 S. Ct. 434, 55 L. Ed. 465, the State sought to maintain an action in this Court against the carrier to restrain it from charging unreasonable rates within Oklahoma. Setting forth the congressional grant under which the railway in question was operated and insisting that the Company was not entitled to charge the inhabitants of Oklahoma a greater freight rate for the transportation of certain commodities than that authorized for similar service in Kansas, the State alleged its interest in the develop-

ment of its communities and in the success of its industries, and the menace to the future of the State through what was deemed to be a violation of the conditions of the grant. *But the Court pointed out that the State was not seeking to protect a direct interest of its own in the transportation of the commodities in question, but was endeavoring to compel the railway company to respect the rights of the shippers of these commodities.* Id., pages 286, 287, 31 S. Ct. 434. The bill was dismissed. The Court summarized its conclusion in these words: "We are of opinion that the words in the Constitution conferring original jurisdiction on this Court in a suit "in which a state shall be a party" are not to be interpreted as conferring such jurisdiction in every cause in which the state elects to make itself strictly a party plaintiff of record, and seeks not to protect its own property, but only to vindicate the wrongs of some of its people" (304 U. S. 394, 395). (Emphasis supplied).

Both the *Cook* and *Santa Fe* cases were cited with approval in *Georgia v. Pennsylvania RR* (324 U. S. 446, 451).

Since the only injury complained of with respect to fishing is to citizens of Alabama, not to the State itself, the State is not the real party in interest and the motion for leave to file the complaint must be denied. The Eleventh Amendment rigidly prohibits suit by them against Louisiana, directly or indirectly.

III.

ALABAMA'S COMPLAINT FAILS TO PRESENT A CASE OR CONTROVERSY IN ANY RESPECT UNDER ARTICLE III OF THE CONSTITUTION.

Alabama's complaint fails to set forth a "case or controversy" under Article III of the Constitution, for the following reasons:

(A). Alabama has suffered no infringement of any personal or property right by virtue of the appropriation and grant of property in the Submerged Lands Act, and

hence has no legal standing to sue with respect to it, as pointed out in I (C). above. *Massachusetts v. Mellon* alone is a complete bar.

(B). There is no case or controversy with respect to any alleged "attempts" by Louisiana to extend her boundaries seaward. (Complaint par. XXXIV). The Louisiana Legislature, the only branch of the Louisiana State Government constitutionally empowered to extend her boundaries, has taken no action whatever with respect thereto since the entry of the Court's decree in 1950 in *United States v. Louisiana*, 340 U. S. 899, or the passage of the Submerged Lands Act. No official of the State of Louisiana is empowered to "extend" or to "attempt" to extend her boundaries. The result is that the allegations of "attempts" to extend Louisiana's boundaries seaward are completely hollow and say nothing. They have no legal substance and should be disregarded. Once disregarded, Alabama is left without anything resembling a boundary controversy.

(C) The seaward boundaries of Louisiana were neither created nor altered under the provisions of the Submerged Lands Act.

Title I, Section 2 (b) of the Submerged Lands Act reads as follows, to-wit:

"The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico."

Title II, Section 4 of the same Act provides that:

"The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

Thus, it is seen that in adopting the Submerged Lands Act Congress only dealt with the seaward boundaries of the several States in two main respects: First, it recognized such boundaries as they existed when each respective State was admitted to the Union, and second, it gave consent to those States admitted to statehood after the formation of the Union that had not already done so to extend their seaward boundaries to a line three geographical miles distant from its coast line.

(D). In any event, there is no case or controversy with Alabama over the "assertion" of dominion by Louisiana over oil companies or individual Alabama fishermen outside the three mile belt or in any other area. First, whatever oil leases Louisiana may enter into with third parties in any seaward area is of absolutely no concern to

Alabama. Such leases do not affect her at all. Second, so far as the "assertion" of "dominion" over fishermen is concerned, Alabama sues not on her own behalf, but only on behalf of individual fishermen. She is thus not the real party in interest and the motion for leave to file a complaint in that respect must be denied, as pointed out in II, *ante*. There is certainly no vestige of a case or controversy there.

IV.

ALABAMA'S COMPLAINT IS INSUFFICIENT FOR WANT OF EQUITY.

Alabama's complaint does not set forth any ground of equitable jurisdiction, and so is wholly insufficient, for the following reasons:

(A). Alabama Does Not Allege the Absence of an Adequate Remedy at Law.

The absence of such an allegation, alone, is fatal to Alabama's claim to equitable relief. Thus, in *Henrietta Milk v. Rutherford County, N.C.* (1930), 281 U. S. 121, a bill seeking to enjoin the collection of taxes was dismissed for want of jurisdiction on the ground that there was an adequate remedy at law. Speaking for a unanimous court, Mr. Chief Justice Hughes delineated the basic requirement that equitable jurisdiction depends upon the lack of an adequate remedy at law, as follows:

"Section 16 of the Judiciary Act of 1789 (1 Stat. 82) provided 'That suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law.'"

See also, *Terrace v. Thompson* (1923), 263 U. S. 197, 214, where the Court, among other things, said:

"That a suit in equity does not lie where there is a plain adequate and complete remedy at law is so well understood as not to require the citation of authorities."

(B). Alabama is Suffering No "Irreparable Injury" With Respect to the Appropriation and Grant of Property.

Alabama has no legal standing to sue and no right to any "equal footing" with respect to the appropriation of the funds held in escrow or the grant of property made by the Submerged Lands Act. Accordingly she can suffer no "irreparable injury" there.

(C). There Is No Case or Controversy Over Boundaries. Much Less Any "Irreparable Injury" Concerning Them.

There is simply no legal connection between (1) the appropriation of funds in escrow and the grant of property made by the Submerged Lands Act, and (2) Alabama's allegations concerning boundaries and offshore commercial and shrimp fishing. Alabama's allegations concerning the Submerged Lands Act cannot be made to look any better by referring, in the same document, to alleged "attempts" to extend Louisiana's boundaries and to offshore shrimp fishing. The two sets of allegations acquire no cumulative strength by virtue of being printed in the same document, and should, we submit, be examined wholly separately. Particularly from the standpoint of want of equity.

With respect to Louisiana's seaward boundaries, the Submerged Lands Act did not purport to alter them or create new ones (III C, *supra*). And the Louisiana Legislature, the only branch of the Louisiana State Government which could have constitutionally undertaken to extend them, has taken no action in that regard since the passage of said Act and the decree of the Court in *United States v. Louisiana*, 340 U. S. 899, *supra*.

Moreover, no one with any power to act for the State can "attempt" or has "attempted" to extend Louisiana's seaward boundaries. In fact, an "attempt" to extend a boundary is a sheer contradiction in terms. Only the Legislature can extend them, and in turn, the Legislature cannot "attempt" to extend them. It can only act or refrain from acting. Hence, Alabama's allegations that

Louisiana has been "attempting" to extend her boundaries (Complaint, par. XXXIV), have no legal substance; there is no case or controversy respecting boundaries, and there is no "irreparable injury" with respect thereto.

(D). There Are Adequate State Remedies Available to Any Alabama Fisherman Who Might Complain of Discrimination.

Alabama's argument that Louisiana is somehow "threatening" Alabama fishermen with discriminatory license fees and excise taxes is simply contrary to Louisiana law. While Louisiana is not called upon in this jurisdictional issue to plead and show the fairness of its commercial fishing laws to residents of other States in relation to her own citizens, an examination of Louisiana statutes clearly reflects the non-discriminatory nature of such laws. Louisiana Revised Statutes of 1950, Title 56, sections 351-401. Indeed, these laws are so plainly non-discriminatory that any official endeavoring to give an Alabama citizen discriminatory treatment would be subject to mandamus or other corrective judicial remedy under Louisiana law. Thus, (1) Alabama herself has no interest whatever in license fees and excise taxes assessed against certain of her citizens, *Toomer v. Witsell* (1948), 334 U. S. 385; (2) the claim of discrimination is wholly groundless; (3) there are one or more adequate remedies at law for any Alabama citizen who might claim discrimination; and (4) these are adequate State remedies.

(E). Alabama's Complaint Does Not Allege Facts Showing "Irreparable Injury" to Her by Virtue of Any "Assertion" of Dominion by Louisiana.

Taking, at their face value, the allegations of Alabama's complaint (paragraphs XXV, XXVI) that Louisiana is "asserting" dominion over some area that is not agreeable to Alabama, it does not follow from that that Alabama citizens, much less Alabama herself, do not have perfectly

adequate remedies at law or that they are suffering "irreparable injury" by reason thereof. So far as Alabama herself is concerned, she is in no wise affected. She may not sue Louisiana on behalf of her fishermen, in violation of the Eleventh Amendment (Point II hereof).

Moreover, there is no allegation in Alabama's complaint of the lack of an adequate remedy at law; and there is a complete absence of allegations of fact showing that Alabama fishermen are suffering "irreparable injury" in any respect.

First, any Alabama fisherman wanting to fish in Louisiana waters can obtain a license which will solve all his problems. Second, any Alabama fisherman who wants to fish off Louisiana without obtaining a license has perfectly orthodox legal remedies for testing out such a claim of right, with review by this Court. With respect to whether license fees are properly charged, Louisiana provides clear remedies at law, including full opportunity by any fisherman to defend. See Louisiana Revised Statutes of 1950, Title 56, sections 376-398, 496 and 500. Third, any taxes paid under protest may be recovered under a "Remedy at Law", in either a State or Federal court, specifically provided by Section 1576 of Title 47, Louisiana Revised Statutes of 1950, for their recovery (see appendix). And by the same sub-title, enjoining the collection of a Louisiana tax is specifically prohibited (Section 1575).

The adequacy of the remedies at law and the absence of any "irreparable injury" in similar situations, are clearly established. In *California v. Latimer* (1938), 305 U. S. 255, an original suit in this Court seeking equitable relief was dismissed for want of equity on the ground that there was an adequate remedy at law. The State of California sued to enjoin the members of the Railroad Retirement Board from enforcing the Railroad Retirement Act against a state-owned railroad, the State Belt Railroad, claiming not to be subject to that Act. The bill asserted that the defendants had "threatened" to require complainant, to

keep records at "great expense" and to enforce "certain penalties" for non-compliance with the Act. The bill prayed for an injunction against enforcement of the Act and for a decree declaring it to be unconstitutional, if applied to the State Belt Railroad.

In dismissing the bill for want of equity on the ground that there were adequate remedies at law, Justice Brandeis, speaking for a unanimous Court, said:

"The defendants moved to dismiss the bill, assigning therefor nine grounds. We need consider only the objection that the bill is without equity. For we are of opinion that there was adequate opportunity to test at law the applicability and constitutionality of the Acts of Congress; and that no danger is shown of irreparable injury if that course is pursued." (305 U. S. 258, 259).

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"The only 'threats' made against the complainant in connection with these sections is a ruling by the Railroad Retirement Board that the State Belt Railroad is subject to the Railroad Retirement Acts. No specific action in relation to that railroad appears to have been taken by the Board. Regulations have been prescribed under sections 8 and 10 which are simple and of a type which can be complied with largely by transcriptions from payrolls. The bill alleges that compliance with the regulations would subject the State 'to great expense'. No supporting detail or specification is given. *Such a general statement is not an adequate basis for relief on the ground of irreparable damages.*" (305 U. S. 259, 260). (Emphasis supplied).

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"Moreover, the Board is without power to enforce its regulations except by resort to legal proceedings, as provided in Section 10(b) 4; and *in any suit which it may institute to enforce the regulations ample opportunity is afforded to defend, on the ground that State Belt Railroad is not subject to the Railroad Retirement Acts.* It is contended that the possible penalty, in case of a prosecution under Section 13, is so

serious as to prevent the opportunity to defend from being an adequate remedy. Compare *Ex parte Young*, 209 U. S. 123, 165, 28 S. Ct. 441, 456, 52 L. Ed. 714, 13 L. R. A., N. S., 932, 14 Ann. Cas. 764. No prosecution has been instituted or threatened." (305 U. S. 260, 261). (Emphasis supplied).

Also, there can be no "irreparable injury" involved with regard to the collection of excise or other taxes, for if the Alabama fishermen do not want to pay them they have a perfectly clear remedy at law for getting them back. Section 1576 of Title 47 of the Louisiana Revised Statutes of 1950, (see appendix), provides a specific remedy at law for obtaining a refund, in either State or Federal Court, of any tax improperly exacted. As was so cogently pointed out in *California v. Latimer, supra*:

"The alleged threat of the Commissioner of Internal Revenue to require payment of the tax does not show danger of irreparable injury. The only threat alleged is the ruling that the Carriers Taxing Act is applicable to this railroad—a ruling made in answer to an enquiry by the Attorney General of the State. The tax for the year is \$7,862.32 payable by the State Belt Railroad; and an equal amount payable by the employees to be deducted by it from their compensation. *Payment of the tax would not expose the State to irreparable injury, since the amount paid with interest could be recovered if not due.* Payment followed by proceedings to recover the amount would involve some delay, as an action at law to recover the sum paid could not be instituted until six months after making the claim for refund, if the Commissioner should fail to act earlier upon it. Such possible delay, it is urged, is a special circumstance which justifies resort to a suit for an injunction in order that the question of liability may be promptly determined. If the delay incident to such proceedings justified refusal to pay a tax, the federal rule that a suit in equity will not lie to restrain collection on the sole ground that the tax is illegal, could have little application. For possible delay of that character is the common incident of practically

every contest over the validity of a federal tax." (Emphasis supplied).

In addition, "It is particularly desirable to decline to exercise equity jurisdiction when the result is to permit a state court to have an opportunity to determine questions of state law which may prevent the necessity of decision on a constitutional question. *City of Chicago v. Fieldcrest Dairies*, 316 U. S. 168, 173." *Burford v. Sun Oil Co.* (1943) 319 U. S. 333, note 29. In the instant case, whether Louisiana is "asserting" any dominion anywhere is a question of state law, which depends upon the construction of Louisiana statutes, and which can only be determined by the Louisiana courts.

So here (1) there is no showing of facts constituting any "irreparable injury" to Alabama or to any citizen thereof; (2) it is clear that in any suit which might be brought to subject any Alabama citizen (not the State of Alabama) to the Louisiana shrimp fishing laws, in any area, such citizen would have "ample opportunity to defend", with review by this Court; (3) any Alabama fisherman may sue at law to recover any taxes improperly collected, with review by this Court; and (4) questions of State law are involved. Hence, there are clear and adequate remedies at law and the bill should be dismissed for want of equity.

CONCLUSION

The motion of the State of Alabama for leave to file a complaint should be denied.

Respectfully submitted,

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December 1953.

APPENDIX**Louisiana Revised Statutes of 1950, Title 47, Revenue and Taxation.****Sub-Title Part III, Assessment and Collection Procedures.****Section 1575: *Injunctions Prohibited.***

No court of this State shall issue any process whatsoever to restrain the collection of any tax, penalty, interest or other charge imposed in this Sub-title.

Section 1576: *Payment of Tax Under Protest: Remedy At Law For Recovery.*

A right of action is hereby created to afford a remedy at law for any person aggrieved by the prohibition of courts restraining the collection of tax, penalty, interest or other charges imposed in this Sub-title. The person resisting the payment of any amount found due by the collector, or of enforcement of any provisions of this Sub-title, shall pay the amount found due to the collector and at that time shall give the collector notice of his intention to file suit for the recovery thereof. Upon receipt of this notice the amount paid shall be segregated and held by the collector or his duly authorized representatives for a period of thirty days. If suit is filed within the thirty-day period for the recovery of such amount, the funds segregated shall be further held pending the outcome of the suit. If the person prevails, the collector shall refund the amount to the claimant, with interest at the rate of 2% per annum covering the period from the date said funds were received by the collector to the date of refund.

This Section shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of this Sub-title, as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such action, service of process upon the collector shall be sufficient service, and he shall be the sole necessary and proper party defendant in any such suit.

This Section shall be construed to provide a legal remedy in the state or federal courts, by action at law, in case such taxes are claimed to be an unlawful burden upon interstate commerce, or the collection thereof, in violation of any Act of Congress or the United States Constitution, or the Constitution of the State of Louisiana, or in any case where jurisdiction is vested in any of the courts of the United States.

Upon request of a person and proper showing by such person that the principle of law involved in an additional assessment is already pending before the courts for judicial determination, such person, upon agreement to abide by the decision of the courts, may pay the additional assessment under protest, but need not file an additional suit. In such cases the tax so paid under protest shall be segregated and held by the collector until the question of law involved has been determined by the courts and shall then be disposed of as therein provided.

Certificate of Service

I hereby certify that I have, this third day of December, 1953, served the foregoing document upon each of the following persons by mailing a copy thereof, postage prepaid, to him or her at the address listed below.

Hon. Si Garrett
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bama
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Hon. Richard W. Ervin
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Hon. George M. Humphrey
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TOPICAL INDEX

	PAGE
Statement	1
Objections	3
Argument	4

I.

The complaint does not state a case or controversy within the jurisdiction of this Court.....	4
A. The constitutionality of Public Law 31 is not subject to attack in this suit by Alabama.....	5
1. Alabama has not been injured by the passage of Public Law 31.....	5
2. Alabama does not have standing to challenge the constitutionality of Public Law 31 on behalf of her citizens	14
3. The validity of Public Law 31 is a political and not a justiciable question.....	19
B. The alleged actions of Texas, Louisiana, and Florida afford no basis for an exercise of this Court's original jurisdiction	24
1. Alabama has no standing to challenge the alleged boundary claims of Texas, Louisiana, and Florida..	25
2. This Court should not entertain Alabama's request for an injunction restraining Texas, Louisiana, and Florida from applying their statutes to Alabama citizens	28
a. The request for an injunction is premature and unwarranted	28
b. Alabama citizens have an adequate remedy in a lower court	31

II.

The United States is an indispensable party and has not consented to be sued.....	34
Conclusion	40

TABLE OF AUTHORITIES CITED

CASES

PAGE

A. Magnano Co. v. Hamilton, 292 U. S. 40.....	12
Aetna Life Ins. Co. v. Haworth, 300 U. S. 227.....	12
Alabama v. Arizona, 291 U. S. 286.....	29, 30, 33
Alabama Power Co. v. Ickes, 302 U. S. 464.....	12
Arizona v. California, 283 U. S. 423.....	26
Arizona v. California, 298 U. S. 558.....	2, 35, 36, 37, 39
Ashwander v. Tennessee Valley Authority, 297 U. S. 288.....	11, 12, 23
Barrows v. Jackson, 346 U. S. 249.....	11, 12
Butte City Water Company v. Baker, 196 U. S. 119.....	23
C. & S. Air Lines v. Waterman Corp., 333 U. S. 103.....	21, 22
Champlin Rfg. Co. v. Commission, 286 U. S. 210.....	12
Coleman v. Miller, 307 U. S. 433.....	12
Columbus & Greenville Ry. v. Miller, 283 U. S. 96.....	12
Communications Comm'n v. N. B. C., 319 U. S. 239.....	12
Connecticut v. Massachusetts, 282 U. S. 660.....	29
Doremus v. Board of Education, 342 U. S. 429.....	12
Eccles v. Peoples Bank, 333 U. S. 426.....	29
Federal Power Commission v. Idaho Power Co., 344 U. S. 17....	19
Florida v. Mellon, 273 U. S. 12.....	12, 15, 16
Frothingham v. Mellon, 262 U. S. 447.....	27
Gange Lumber Co. v. Rowley, 326 U. S. 295.....	12
Georgia v. Pennsylvania R. Co., 324 U. S. 439.....	2, 4, 12, 16, 17, 19, 33
Georgia v. Tennessee Copper Company, 206 U. S. 230.....	18
Goldberg v. Daniels, 231 U. S. 218.....	39
Hopkins Savings Assn. v. Cleary, 296 U. S. 315.....	12, 19
Hudson Water Company v. McCarter, 209 U. S. 349.....	18
International Postal Supply Co. v. Bruce, 194 U. S. 601.....	37, 39

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123	12
Jones v. Bowles, 322 U. S. 707	12
Kansas v. Colorado, 185 U. S. 125	18
Kansas v. United States, 204 U. S. 331	39
Larson v. Domestic & Foreign Corp., 337 U. S. 682	39
Lévitt, Albert, Ex parte, 302 U. S. 633	12
Liberty Warehouse Co. v. Grannis, 273 U. S. 70	12
Louisiana v. Garfield, 211 U. S. 70	37
Louisiana v. Jumel, 107 U. S. 711	38, 39
Louisiana v. McAdoo, 234 U. S. 627	39
Marine Ry. & Coal Co. v. United States, 257 U. S. 47	26
Marshall Dental Manufacturing Company v. Iowa, 226 U. S. 460	18
Massachusetts v. Mellon, 262 U. S. 447	11, 12, 13, 14, 15, 16, 17, 18, 19
Massachusetts v. Missouri, 308 U. S. 1	26, 32, 33
McKay v. Kalyton, 204 U. S. 458	38
Mine Safety Appliances Co. v. Forrestal, 326 U. S. 371	39
Minnesota v. United States, 305 U. S. 382	37, 38
Missouri v. Holland, 252 U. S. 416	17, 18, 19
Missouri v. Illinois, 200 U. S. 496	28
Mormon Church v. United States, 136 U. S. 1	23
Morrison v. Work, 266 U. S. 481	38
Nashville, C. & St. L. R. Co. v. Wallace, 288 U. S. 249	12
Nebraska v. Wyoming, 325 U. S. 589	29
New Jersey v. Sargent, 269 U. S. 328	12, 13
New Mexico v. Lane, 243 U. S. 52	38
New York v. Illinois, 274 U. S. 488	14
New York v. New Jersey, 256 U. S. 296	28
North Dakota v. Minnesota, 263 U. S. 365	28

Oklahoma v. United States Civ. Serv. Comm., 330 U. S. 127.....	12
Pennsylvania v. West Virginia, 262 U. S. 553.....	31
Perkins v. Lukens Steel Co., 310 U. S. 113.....	4, 12, 27
Peru, Ex parte, 318 U. S. 578.....	21
Singer & Sons v. Union Pacific R. Co., 311 U. S. 295.....	12
Smoot Sand & Gravel Corp. v. Washington Airport, 283 U. S. 348	26
Stark v. Wickard, 321 U. S. 288.....	12, 27
Tennessee Power Co. v. T. V. A., 306 U. S. 118.....	12
Texas v. Interstate Commerce Commission, 258 U. S. 158.....	13
Toomer v. Witsell, 334 U. S. 385.....	31, 32
Tyler v. Judges of the Court of Registration, 179 U. S. 405.....	11
United States v. Butler, 297 U. S. 1.....	12
United States v. Curtiss-Wright Corp., 299 U. S. 304.....	21
United States v. San Francisco, 310 U. S. 16.....	20
United States v. Texas, 339 U. S. 707.....	7, 8
United States v. West Virginia, 295 U. S. 463.....	4, 14
United States v. Wyoming, 331 U. S. 440.....	20
United States v. Wyoming, 335 U. S. 895.....	20
Western Pacific Cal. R. Co. v. Southern Pac. Co., 284 U. S. 47..	12
Williams v. Riley, 280 U. S. 78.....	12
Willing v. Chicago Auditorium, 277 U. S. 274.....	12

STATUTES

Public Law 31 (83d Cong., 1st Sess., 67 Stat. 29).....	2, 4, 6, 7, 10, 11, 14, 23, 24, 25, 34
Public Law 31:	
Sec. 2	25
Sec. 2(b)	6
Sec. 3(a)	5, 9
Sec. 3(b)(3)	8
Sec. 4	5
Sec. 6	21
Public Law 212 (83 Cong., 1st Sess., 67 Stat. 462).....	25

Public Law 212:

Sec. 3	25
Sec. 4(a)	25
Sec. 5	25
Sec. 8	25
Sec. 9	25
Public Law 887 (July 2, 1948)	20
United States Code Annotated, Title 43, Secs. 981-982, anno.	24
United States Constitution, Art. IV, Sec. 3, Clause 2	19

MISCELLANEOUS

Carson, The Sea Around Us, p. 188 (1951)	8
99 Congressional Record, pp. 2716, 2717, 2728, 2797	10
99 Congressional Record, p. 4330	9
99 Congressional Record, pp. 4628, 4629	9
99 Congressional Record, p. 4646	5
99 Congressional Record, pp. 5065-5066	5
Executive Order 9633	25
10 Federal Register, p. 12305	25
15 Federal Register, p. 8835	9
House Report 4198	5
Presidential Proclamation No. 2667, Sept. 28, 1945 (59 Stat. 884)	25
Presidential Proclamation No. 2668, Sept. 28, 1945 (59 Stat. 885)	25
Report of the Director of the Bureau of Land Management, Department of the Interior (1952), p. 136	24
Report of National Petroleum Council, Submerged Lands Capacity, p. 22 (May 28, 1953)	8
Senate Hearings on S-1901, 83d Cong., 1st Sess., pp. 579-581	21
Senate Joint Report No. 133 (S. J. Res. 13, 83d Cong., 1st Sess., p. 7)	5
United States Supreme Court Bulletin (1953-1954), p. 34	2

IN THE
Supreme Court of the United States

October Term, 1953
No., Original

STATE OF ALABAMA,

Complainant,

vs.

STATE OF TEXAS, STATE OF LOUISIANA, STATE OF FLORIDA,
STATE OF CALIFORNIA, GEORGE M. HUMPHREY,
DOUGLAS, MCKAY, ROBERT B. ANDERSON, IVY BAKER
PRIEST,

Defendants.

**Objections of the States of California and Florida to
Motion of the State of Alabama for Leave to File
Complaint.**

STATEMENT

On September 26, 1953, the State of Alabama filed with this Court a motion for leave to file a complaint against the States of Texas, Louisiana, Florida, and California and George M. Humphrey, Douglas McKay, Robert B. Anderson, and Ivy Baker Priest. The motion was accompanied by a supporting brief and a copy of the

proposed complaint. In the complaint, Alabama prayed for a declaration that Public Law 31, 83d Cong., 1st Sess., 67 Stat. 29, is unconstitutional and void, and for an injunction restraining defendant States from asserting jurisdiction in offshore waters, restraining the individual defendants from acquiescing in such assertions, and restraining the individual defendants from making payment of certain funds to the defendant States.

Subsequently defendants filed motions for leave to file objections to Alabama's motion for leave to file a complaint. On October 26, 1953, this Court granted defendants' motions and allowed 40 days for the filing of objections. 1953-54 U. S. Sup. Ct. Bull. 34.

The following objections are presented jointly by California and Florida. These objections are directed solely to Alabama's motion for leave to file a complaint and are limited to jurisdictional arguments which make it "plain that no relief may be granted in the exercise of the original jurisdiction of this Court." *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 445 (1945); *Arizona v. California*, 298 U. S. 558, 559 (1936). For that reason, no argument on the merits is being submitted at this time.

OBJECTIONS

1. The complaint does not state a case or controversy within the jurisdiction of this Court in that:

(a) Alabama has not been injured by the passage of Public Law 31.

(b) Alabama does not have standing to challenge the constitutionality of Public Law 31 on behalf of her citizens.

(c) The validity of Public Law 31 is a political and not a justiciable question.

(d) Alabama has no standing to challenge the alleged boundary claims of Texas, Louisiana, and Florida.

(e) Alabama's request for an injunction restraining Texas, Louisiana, and Florida from applying their statutes to Alabama citizens is premature and unwarranted.

(f) Alabama citizens have an adequate remedy in a lower court to test the applicability to them of Texas, Louisiana, and Florida statutes.

2. The United States is an indispensable party and has not consented to be sued.

ARGUMENT

The Complaint Does Not State a Case or Controversy Within the Jurisdiction of This Court.

The original jurisdiction of this Court can be exercised only in "cases" and "controversies" within the confines of judicial power granted by the Constitution. It is not enough that a State is a party. *United States v. West Virginia*, 295 U. S. 463, 470-471 (1935); *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 445-446 (1945). This jurisdictional requirement rests, not upon a "mere formality," but rather "upon reasons deeply rooted in the constitutional divisions of authority in our system of Government." *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 132 (1940). In this brief, California and Florida will show that, measured by the long established rules of this Court for determining the existence of a "justiciable controversy," the complaint of the State of Alabama falls short.

The real object of Alabama's complaint is to attack the constitutionality of an Act of Congress, namely, Public Law 31, enacted May 22, 1953, 67 Stat. 29. Alabama's other arguments appear to be "makeweights" advanced in an attempt to satisfy the Court's jurisdictional requirements and thereby bring this constitutional question before the Court. These other arguments will be considered in due course, but attention is first directed to the challenge to the validity of Public Law 31.

A. The Constitutionality of Public Law 31 Is Not Subject to Attack in This Suit by Alabama.

1. ALABAMA HAS NOT BEEN INJURED BY THE PASSAGE OF PUBLIC LAW 31.

Public Law 31 treats all forty-eight States, including Alabama, exactly alike. Section 3(a) of that Act declares that ownership and management of the "lands beneath navigable waters within the boundaries of the respective States" are confirmed and vested in said States. The Senate Interior and Insular Affairs Committee, which was principally responsible for drafting the provisions of the bill which was finally enacted,¹ emphasized this equality of treatment in its Report, as follows:

"The joint resolution treats all of the States alike, both inland and coastal, with respect to lands beneath navigable waters within their respective boundaries." Report No. 133 to accompany S. J. Res. 13, 83d Cong. 1st Sess., p. 7.

With respect to the seaward boundary of coastal States, Public Law 31 treats Alabama as well as or better than other coastal States. Under Section 4 of the Act, the seaward boundary of each coastal State is either confirmed as being three geographical miles from her coast line, or the State is authorized to extend her boundary to that distance. Section 4 also provides that its provi-

¹The bill prepared and reported out by the Senate Committee (S. J. Res. 13) passed the Senate without substantial modification. 99 Cong. Rec. 4646. This bill, with only its designation changed to H. R. 4198, was then passed by the House and sent to the President. 99 Cong. Rec. 5065-5066.

sions shall not prejudice the "existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress." This provision, however, is qualified by Section 2(b), which states that "in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico."²

The effect of these statutory provisions on Alabama can be summarized as follows: Like all other States, Alabama's ownership and management of all lands beneath navigable waters within her boundaries is confirmed and established. Alabama's seaward boundary is confirmed as being at least three miles from her coast line. If Alabama or any other Gulf State has a claim that her historic coastal boundary is farther than three miles seaward, the Act does not prejudice the claim. At the same time, the Act does not ratify or in any way determine the merits of any such claims beyond three miles. The net result is that Alabama has been benefited, and certainly not injured, by the passage of Public Law 31.³

²It is apparent that this provision differentiates between States bordering on the Gulf and States bordering on the Atlantic or Pacific Oceans. Without going into the valid reasons for this differentiation, it is enough to point out that Alabama, as a State bordering on the Gulf, is in no position to complain of this provision.

³Since the actual result of Public Law 31 is to benefit Alabama, there is no substance to Alabama's vague suggestion (Br. p. 18) that Public Law 31 in effect "demeans" her sovereignty.

Yet Alabama argues, in the face of these clear statutory provisions, that Public Law 31 deprives her of important rights. Alabama recognizes that like other coastal States she has been granted ownership and management of the area three miles seaward from her coast line. But Alabama complains (Br. pp. 61-63) that her three-mile belt is not as valuable as those of other States and, in particular, that no oil has yet been discovered in Alabama waters. This circumstance, she contends, violates the "equal footing" clause.

That this argument misconceives the effect of the "equal footing" clause is shown by the following statement of this Court in *United States v. Texas*, 339 U. S. 707, 716 (1950):

"The 'equal footing' clause has long been held to refer to political rights and to sovereignty. See *Stearns v. Minnesota*, 179 U. S. 223, 245. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense . . . Area, location, geology, and latitude have created great diversity in the economic aspects of the several States. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty."

This statement makes it clear that the clause does not guarantee that the property owned by Alabama shall be equal in "economic stature or standing" to that held by other States. Area, location, geology, or latitude may have created diversities between the value of the resources in Alabama's three-mile belt and those of other States, but the equal footing clause was not designed to, and could not, wipe out those diversities.

Nothing in the *Texas* case affords support for Alabama's argument that the "equal footing" clause is violated because the resources of her three-mile belt are less valuable than those of other States. There was no suggestion that if the coastal States are permitted to hold a portion of the offshore area, the area each State holds must have resources of equal character and value.

Alabama's argument that the value of her three-mile belt is "highly speculative" (Br. p. 63) points up the fallacy of her contention. The ultimate value of all the offshore areas is indeed highly speculative. Scientists and engineers are in agreement that these areas are only in their earliest stage of development.⁴ Thirty years ago, California's three-mile belt may well have been worth less than the shrimp beds in Alabama's offshore waters. If, at present, Alabama regards her three-mile belt as less valuable than those of other States, this situation could at any time be reversed by the discovery of minerals or other valuable substances in Alabama's offshore waters.

In connection with her argument based on the equal footing clause, Alabama also objects to the return to California, Texas, and Louisiana under Section 3(b)(3) of the Act of rents and royalties which have been impounded or held in escrow since the decisions of this Court (Br. p. 7). This objection overlooks the nature of such funds. The impounded rents and royalties were derived from lands beneath navigable waters within the

⁴Carson, *The Sea Around Us*, 188 *et seq.* (1951); Statement of Dr. Harold F. Clark, Professor in Charge of Educational Economics at Columbia University, Hearings before Senate Interior and Insular Affairs Committee on S. J. Res. 13 and other Bills, 83d Cong., 1st Sess., 354 *et seq.*; Rep. Nat. Petroleum Council, submerged Lands Capacity, 22 (May, 28, 1953).

boundaries of the States. They accrued because both the United States and the States concerned recognized the vital importance of continued oil production and urged the holders of State-issued leases to maintain their operations pending the resolution of the offshore controversy.⁸ If the oil on which the royalties were paid had remained in the ground, its ownership and control would have been vested and confirmed in the coastal States by Section 3(a) of Public Law 31. Thus it was appropriate and fair for Congress to turn the "escrow" funds derived from the areas within State boundaries over to the respective States. That Congress so viewed the nature of these funds is shown by the following reply of Senator Spessard Holland, a chief sponsor of the bill, to Senator Estes Kefauver:

"The reason for my calling attention to it at this time is that all these stipulations show that the Senator was exactly right in the use of the word 'escrow' as applied to these funds, because the funds were neither the property of the United States nor of the State of California, but were, instead, put up in lieu of the oil which was taken from the ground, in order to be available to carry out any final decision which was made with respect to this controversy."

99 Cong. Rec. 4330. See also 99 Cong. Rec. 4628, 4629.

⁸The Stipulation between the United States and the State of California, entered into on July 26, 1947, and thereafter revised and extended, was designed "to insure the production of oil and gas necessary to meet the critical need now existing" and it was to remain in effect until "pertinent legislation is enacted by the Congress." The Notice of the Secretary of the Interior dated Dec. 11, 1950, as thereafter revised and extended, stated that "undue interruption of the present operations in the Gulf of Mexico would involve the risk of injury to our national security and economy." 15 F. R. 8835.

Alabama also implies (Br. p. 63) that Public Law 31 infringes her rights by unconstitutionally authorizing Texas, Louisiana, and Florida to extend their boundaries nine nautical miles into the Gulf of Mexico. However, both the Act and its legislative history emphatically show that there is no warrant for such an argument.

Section 4 of the Act authorizes any coastal State which has not done so to extend her seaward boundary to a line three miles from her coast line. But neither Section 4 nor any other part of the Act authorizes a State to extend her boundary beyond three miles or grants new territory beyond that distance that was not within a State's historic legal boundary prior to the Act. If a Gulf State has a claim that her historic legal boundary is actually more than three miles seaward, the Act does not ratify or in any way determine the merits of that claim. Indeed, the debate in the Senate makes it clear that it was the firm purpose of Congress neither to prejudice nor to aid the proof of such claims. 99 Cong. Rec. 2716, 2717, 2728, 2797.* Consequently, there is no support for Alabama's repeated assertions that the claims of certain Gulf States to boundaries extending nine nauti-

*Senator Guy Cordon, Floor Manager of the Bill, stated: "The States of the United States have legal boundaries Whenever a question arises as to a boundary, it will be determined exactly as any other question in law is determined, and the boundary will be established. The pending measure does not seek to prejudice that issue, or to determine it." 99 Cong. Rec. 2716.

cal miles into the Gulf of Mexico are made "under color of Public Law 31."

The sum of the matter is that the passage of Public Law 31 results in no injury to Alabama. This fact brings Alabama's complaint squarely within the well-settled principle that the Court "will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operations." Concurring opinion of Mr. Justice Brandeis in *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 347-348 (1935); *Tyler v. Judges of the Court of Registration*, 179 U. S. 405, 410 (1900); see *Barrows v. Jackson*, 346 U. S. 249, 255 (1953).

The leading case in which the Court has refused to exercise the original jurisdiction on this ground is *Massachusetts v. Mellon*, 262 U. S. 447 (1923). There the constitutionality of the Maternity Act of November 23, 1921, was assailed on the ground that it invaded and usurped the rights and powers of Massachusetts as a sovereign State and of its citizens. Upon analyzing the statute, however, the Court found that no legal rights

Even if Public Law 31 had ratified claims to submerged lands more than three miles from the coast line (which it did not), there would be no basis for an exercise of the original jurisdiction. As pointed out at pages 19-24, *infra*, the validity of provisions granting offshore lands to the States is a political and not a justiciable question. Moreover, as we show at pages 25-28, *infra*, the area seaward of a State's legal boundary is an exclusively Federal area, and invalid assertions in that area could injure only the United States and not any individual State.

of the State were adversely affected by its operation. Therefore, the Court dismissed the action, holding:

"No rights of the State falling within the scope of the judicial power have been brought within the actual or threatened operation of the statute, and this court is as much without authority to pass abstract opinions upon the constitutionality of acts of Congress as it was held to be, in *Cherokee Nation v. Georgia*, *supra*, of state statutes." 262 U. S. at 485.

*The authority of this case, which is relied on extensively throughout this brief, has not been questioned since it was rendered in 1923. On the contrary it has been followed or cited with approval more than twenty times by this Court. *Barrows v. Jackson*, 346 U. S. 249, 255 (1953); *Doremus v. Board of Education*, 342 U. S. 429, 433 (1952) (and see dissenting opinion at 435); *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, 151 (concurring opinion); *Oklahoma v. U. S. Civ. Serv. Comm.*, 330 U. S. 127, 139 (1947) (principal case distinguished); *Gange Lumber Co. v. Rowley*, 326 U. S. 295, 305 (1945); *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 445-446 (1945) (principal case distinguished); *Jones v. Bowles*, 322 U. S. 707, 708 (1944) (memorandum opinion); *Stark v. Wickard*, 321 U. S. 288, 304 (1944); *Communications Comm'n v. N.B.C.*, 319 U. S. 239, 266 (1943) (dissenting opinion); *Singer & Sons v. Union Pacific R. Co.*, 311 U. S. 295, 303 (1940); *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 125 (1940); *Coleman v. Miller*, 307 U. S. 433, 440 (1939) (principal case distinguished); *Tennessee Power Co. v. T.V.A.*, 306 U. S. 118, 137 (1939); *Ex parte Albert Levitt*, 302 U. S. 633, 634 (1937); *Alabama Power Co. v. Ickes*, 302 U. S. 464, 478 (1938); *Aetna Life Ins. Co. v. Haworth*, 300 U. S. 227, 241 (1937); *Ashwander v. T.V.A.*, 297 U. S. 288, 348 (1936) (Brandeis, J., concurring); *United States v. Butler*, 297 U. S. 1, 57, 73 (1936) (principal case distinguished); *Hopkins Federal Sav. & Loan Assn. v. Cleary*, 296 U. S. 315, 341 (1935) (principal case distinguished); *A. Magnano Co. v. Hamilton*, 292 U. S. 40, 43 (1934); *Nashville, C. & St. L. R. Co. v. Wallace*, 288 U. S. 249, 261 (1933) (principal case distinguished); *Champlin Refg. Co. v. Commission*, 286 U. S. 210, 238 (1932); *Western Pacific Cal. R. Co. v. Southern Pac. Co.*, 284 U. S. 47, 51 (1931); *Columbus & Greenville Ry. v. Miller*, 283 U. S. 96, 100 (1931); *Williams v. Riley*, 280 U. S. 78, 80 (1929); *Willing v. Chicago Auditorium*, 277 U. S. 274, 289 (1928) (principal case distinguished); *Liberty Warehouse Co. v. Grannis*, 273 U. S. 70, 74 (1927); *Florida v. Mellon*, 273 U. S. 12, 18 (1927); *N. J. v. Sargent*, 269 U. S. 328, 334 (1926).

The same rule applies in the converse factual situation presented by Alabama's complaint. Alabama challenges the constitutionality of Public Law 31 on the ground that it vests in the respective States certain rights and powers which Alabama says should properly be reserved to the Federal Government. But the legal rights of Alabama are not injured by the operation of the statute. As a result, this Court is as much without authority to pass an abstract opinion as it was in *Massachusetts v. Mellon*.

- *New Jersey v. Sargent*, 269 U. S. 328 (1926), is equally pertinent. There an action by New Jersey seeking to question the constitutionality of the Federal Water Power Act of June 10, 1920, was dismissed because of the failure of the State to show that it had suffered any injury. The Court said:

"On reading the present bill we are brought to the conclusion, first, that its real purpose is to obtain a judicial declaration that, in making certain parts of the Federal Water Power Act applicable to waters within and bordering on the State of New Jersey, Congress exceeded its own authority and encroached on that of the State, and secondly, that the bill does not show that any right of the State, which in itself is an appropriate subject of judicial cognizance, is being, or about to be, affected prejudicially by the application or enforcement of the Act." 269 U. S. at 334.

Likewise in *Texas v. Interstate Commerce Commission*, 258 U. S. 158, 162 (1922), the Court refused to pass on "an abstract question of legislative power" where there had been no showing that the complainant's rights "are being, or about to be, affected prejudicially by the application or enforcement" of the statute involved. This prin-

ciple was also applied in *United States v. West Virginia*, 295 U. S. 463, 473-474 (1935). and *New York v. Illinois*, 274 U. S. 488, 490 (1927).*

Applied to the Alabama complaint, these cases indicate that this Court should refuse to take jurisdiction of the State's attack on Public Law 31. Since the legal interests of Alabama are not injured but in fact are benefited by the operation of the statute, the request of Alabama for a declaration as to the constitutionality of the Act should be denied. To render such a declaration would be to pass on an abstract question of legislative power.

2. ALABAMA DOES NOT HAVE STANDING TO CHALLENGE THE CONSTITUTIONALITY OF PUBLIC LAW 31 ON BEHALF OF HER CITIZENS.

The argument in the preceding section showing that Alabama has not been injured by the passage of Public Law 31 of course applies equally to citizens of Alabama. However, even if it be assumed for the purpose of argument that Alabama citizens have been injured by the Act, the State of Alabama does not have standing to represent her citizens in attacking the constitutionality of the Act. This fact is conclusively established by prior decisions of this Court.

*Alabama appears to recognize this principle, for, in attempting to distinguish *Massachusetts v. Mellon*, Alabama says (Br. p. 36) that this Court refused to permit Massachusetts to sue because the interests asserted "were not in fact threatened with invasion." In that connection, Alabama says that "under the Maternity Act, Massachusetts was offered the same chance to obtain the benefits of the Act for its citizens as were the other forty-seven states." (Br. p. 35.) The same thing is true here, for, as we have shown, Alabama like the other forty-seven States has been granted ownership of all lands beneath navigable waters within her boundaries. Moreover, the provisions of the Act regarding her seaward boundary are at least as favorable as those relating to other States.

In *Massachusetts v. Mellon*, *supra*, the State sought to assail the constitutionality of the Maternity Act as a "representative of its citizens." 262 U. S. at 485. This Court held that a State did not have standing as *parens patriae* to challenge the validity of that Federal statute, saying:

" . . . While the State, under some circumstances, may sue in that capacity for the protection of its citizens (*Missouri v. Illinois*, 180 U. S. 208, 241), it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." 262 U. S. at 485-486.¹⁰

This principle was applied and reiterated less than four years later in *Florida v. Mellon*, 273 U. S. 12 (1927). There this Court refused to permit the State of Florida to challenge as a representative of her citizens the constitutionality of the Federal inheritance tax law. The Court said:

"Nor can the suit be maintained by the state because of any injury to its citizens. They are also citizens of the United States and subject to its laws. In respect of their relations with the federal government 'it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such

¹⁰See footnote 8, *supra*.

protective measures as flow from that status.' *Massachusetts v. Mellon*, *supra*, pp. 485-486." 273 U. S. at 18.

The continuing vitality of this principle is clearly demonstrated by *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439 (1945), which has been much relied upon by Alabama. In setting forth the categories of cases not within its original jurisdiction, the Court said:

"... Moreover, *Massachusetts v. Mellon* and *Florida v. Mellon*, *supra*, make plain that the United States, not the State, represents the citizens as *parens patriae* in their relations to the federal government." 324 U. S. at 446.

The Court then distinguished the case before it by saying:

"The present controversy, however, does not fall within any of those categories. This is a civil, not a criminal proceeding. Nor is this a situation where the United States rather than Georgia stands as *parens patriae* to the citizens of Georgia. This is not a suit like those in *Massachusetts v. Mellon*, and *Florida v. Mellon*, *supra*, where a State sought to protect her citizens from the operation of federal statutes. Here Georgia asserts rights based on the anti-trust laws." 324 U. S. at 446-447.

The suit by Alabama on behalf of her citizens falls squarely within the principle enunciated by these cases. In contrast to *Georgia v. Pennsylvania R. Co.*, where a State in effect sued under and by virtue of a Federal statute, Alabama's attack on Public Law 31 makes this suit one in which, as in *Massachusetts v. Mellon* and *Florida v. Mellon*, *supra*, a State seeks to protect her citizens from the operation of a Federal statute. As

those cases indicate, this is a situation involving the relations of citizens of Alabama to the Federal Government where the United States rather than Alabama stands as *parens patriae*. In this situation, the citizens of Alabama must look to the United States and not to the State for protective measures.

Alabama's attempt to escape the application of this principle is not persuasive. The attempted distinction (Br. pp. 34-37) of *Massachusetts v. Mellon* relates largely to Massachusetts' suit in her own behalf as a sovereign State and does not detract from the holding that with regard to relations with the Federal Government, the United States and not the State represents the citizens as *parens patriae*.¹¹ The reliance on *Georgia v. Pennsylvania R. Co.* is misplaced because, as the Court said, Georgia sought to protect its citizens from a price fixing conspiracy by asserting rights "based on federal laws" (324 U. S. at 447), whereas Alabama, on the other hand, seeks to invalidate a Federal statute.

Nor is *Missouri v. Holland*, 252 U. S. 416 (1920), properly cited in support of Alabama's position. That case arose from the enforcement in Missouri of a Federal statute regulating the taking of wild game. In the opinion of the Court by Mr. Justice Holmes, less than a sentence is devoted to the jurisdictional holding that "it is

¹¹Alabama's first reference (Br. p. 34) to *Massachusetts v. Mellon* suggests that she regards it necessary to consider that case in connection with her interests as quasi sovereign and *parens patriae*. However, the subsequent argument is to the effect that "Alabama asserts a real sovereign interest," not an "abstract question of the respective spheres of political power." (Br. pp. 36-37.) The fallacy of this argument was shown in the preceding section of this brief (pp. 5-14), but even if valid, the argument certainly would not show that Alabama can represent her citizens in assailing a Federal statute.

enough that the bill is a reasonable and proper means to assert the alleged quasi sovereign rights of a State." 252 U. S. at 431. Examination of the three cases cited in support of this terse statement shows that in each of them, as in *Missouri v. Holland*, natural resources within the complaining State were directly affected.¹⁹ Therefore, neither *Missouri v. Holland*, nor any of the cases cited therein, is authority for the proposition that a State has standing as quasi sovereign to question an act of Congress respecting Federal lands and resources lying outside that State. Indeed, the subsequent unanimous opinion in *Massachusetts v. Mellon* expressly distinguished *Missouri v. Holland* on the ground that it involved "the quasi sovereign right of the state to regulate the taking of wild game within its borders." 262 U. S. at 482. (Emphasis added.)

¹⁹Thus, *Kansas v. Colorado*, 185 U. S. 125 (1902), involved water rights in an interstate stream which passed through both States. In *Georgia v. Tennessee Copper Company*, 206 U. S. 230 (1907), pollution of the air over the complaining State was enjoined. In *Marshall Dental Manufacturing Company v. Iowa*, 226 U. S. 460 (1913), a State, even without proof of her own title, was allowed to question a private party's claim to the bed of a navigable lake within the State. Perhaps the best expression of the applicable rule was given by Mr. Justice Holmes (for this Court) in *Hudson Water Company v. McCarter*, 209 U. S. 349, 355 (1908), where he said: "But it is recognized that the State as quasi-sovereign and representative of the interests of the public has a standing in court to protect the atmosphere, the water and the forests within its territory, irrespective of the assent or dissent of the private owners of the land most immediately concerned." (Emphasis added.) Significantly *Kansas v. Colorado* and *Georgia v. Tennessee Copper Company* are the only cases which are cited in support of this proposition. Moreover, in *Marshall Dental Manufacturing Company v. Iowa*, which was the third case cited in *Missouri v. Holland*, the *Hudson Water Company* case was relied upon. That this limited rule is the one which is applicable to *Missouri v. Holland* is made even more clear by the direct statement in the *Hudson Water Company* case that "this principle" underlies the right of a State to make laws for the preservation of game. 209 U. S. at 356.

Alabama also places reliance (Br. pp. 39-40) upon *Hopkins Savings Assn. v. Cleary*, 296 U. S. 315 (1935). However, the Court expressly recognized the validity of the *Massachusetts* case and based its decision authorizing Wisconsin to sue on the special relationship between the State and the corporations created by it. The Court said:

" . . . The ruling [in *Massachusetts v. Mellon*] was that it was no part of the duty or power of a state to enforce the rights of its citizens in respect of their relations to the Federal Government. Cf. *Florida v. Mellon*, 273 U. S. 12. Here, on the contrary, the state becomes a suitor to protect the interests of its citizens against the unlawful acts of corporations created by the state itself." 296 U. S. at 341.

The fact that such cases as *Missouri v. Holland* and *Hopkins Savings Assn. v. Cleary* do not qualify *Massachusetts v. Mellon* is shown by this Court's emphatic restatement in *Georgia v. Pennsylvania R. Co.* of the principle that the United States, not a State, represents citizens in their relations to the Federal Government. 324 U. S. at 446.

3. THE VALIDITY OF PUBLIC LAW 31 IS A POLITICAL AND NOT A JUSTICIABLE QUESTION.

Article IV, Section 3, Clause 2 of the Constitution vests in Congress "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." This Court has explicitly held that Congress, in exercising its powers over Government property, is not subject to judicial interference. *Federal Power Commission v. Idaho Power Co.*, 344 U. S. 17, 21 (1952); *United States v.*

San Francisco, 310 U. S. 16, 29-30 (1940). In the *San Francisco* case, the Court said:

" . . . The power over the public land thus entrusted to Congress is without limitations. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.' Thus, Congress may constitutionally limit the disposition of the public domain to a manner consistent with its views of public policy." 310 U. S. at 29-30.

The broad power of Congress to grant property to States is illustrated by the action of this Court in connection with *United States v. Wyoming*, 331 U. S. 440 (1947). That case involved a suit by the United States against Wyoming and its lessee, Ohio Oil Company, in which the Federal Government claimed ownership of land which Wyoming had leased in the belief that it was State school land. The unanimous decision of the Court in 1947 upheld the contentions of the United States but retained jurisdiction for the purpose of determining the amount of damages due from the defendants.

Thereafter Congress passed Public Law 887 of July 2, 1948, which directed the Secretary of the Interior to issue to the State a patent, antedated to July 10, 1890, covering the oil-producing portion of the property. Shortly thereafter, this Court ruled that there was no further need to consider the United States' claim for damages, thus giving full recognition to the plenary power of Congress to grant this Federal property to Wyoming. 335 U. S. 895-896 (1948). Implicit in the Court's ruling was the principle that Congressional action in disposing of Federal property is not open to judicial inquiry.

It is true, of course, that the offshore lands involved here have a special status. In 1947, the Solicitor of the Interior Department ruled, with the concurrence of the Attorney General, that although the Federal Government has paramount rights in the offshore submerged lands under the decision in the *California* case, such lands do not fall into the category of "public lands."¹³ Moreover, this Court emphasized in the *California* case that actions taken in the offshore waters involve foreign relations.¹⁴ 332 U. S. at 35.

However, the special status of these offshore lands only serves to emphasize that the rule against judicial interference is especially applicable to the actions of Congress and the President in this case. It is a well-settled principle that the actions of our political agencies in the field of foreign affairs are not subject to review in this Court. *United States v. Curtiss-Wright Corp.*, 299 U. S. 304, 319-321 (1936); *Ex parte Peru*, 318 U. S. 578 (1943). In *C. & S. Air Lines v. Waterman Corp.*, 333 U. S. 103 (1948), the Court said that decisions in the field of foreign policy

" . . . are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which

¹³See Solicitor's opinion, dated August 8, 1947, in which the Attorney General concurred by letter to the Secretary of the Interior, dated August 29, 1947. Reprinted, Senate Hearings on S-1901, 83d Cong., 1st Sess., 579-581.

¹⁴Section 6 of the Act specifically provides that the Federal Government retains the rights in, and powers of regulation and control over, the lands and waters involved here for constitutional purposes relating to international affairs.

the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion of inquiry." 333 U. S. at 111.

In view of the general rules as to the disposal of Government property and having in mind the special status of the property here involved, it seems clear that the action of the political agencies in vesting ownership and management of the lands involved here in the respective States is not open to review. In addition to the above cited precedents, this Court's decision in the *California* case also provides strong support for this view. In that case, the Court, after noting the general rule ~~that~~ the power of Congress to dispose of Federal property is "without limitation," said with reference to the offshore lands: "Thus neither the courts nor the executive agencies could proceed contrary to an Act of Congress in this congressional area of national power." 332 U. S. at 27. Alabama's insistence (Br. pp. 47-48) that this statement be limited to a context relating to the power of the Attorney General to commence actions on behalf of the United States cannot overcome this Court's emphatic statement that the offshore lands are a "congressional area of national power."

In stating the question before it in the *California* case this Court gave full recognition to the fact that development of the marginal belt would have to be delegated to some agency. The Court said, "our question is whether the state or the Federal Government has the paramount right and power to determine in the first instance when, how, and by what agencies, foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited." 332 U. S. at 29. Moreover, the Court also speaks of a "congres-

sional surrender of title or interest" in a manner that indicates that the authority for such action is unquestioned. 332 U. S. at 39.

The conclusiveness of the actions of the political agencies in the offshore waters is also shown by the Court's reference to this nation's establishment of a three-mile marginal belt. The Court said:

" . . . That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. *Cunard Steamship Co. v. Mellon*, 262 U. S. 100, 122-124. And this assertion of national dominion over the three-mile belt is binding upon this Court." 332 U. S. at 33-34.

In the present case, the action of the political agencies in enacting Public Law 31 is equally binding upon this Court.¹⁸

¹⁸The cases cited by Alabama (Br. pp. 50-51) in an attempt to establish that the action of Congress is subject to review are not in point. In *Butte City Water Company v. Baker*, 196 U. S. 119 (1905), the Court not only upheld the action of Congress in delegating certain matters to State control but also emphasized that "Congress is the body to which is given the power to determine the conditions upon which the public lands shall be disposed of." 196 U. S. at 126. *Mormon Church v. United States*, 136 U. S. 1 (1890), which upheld the power of Congress to repeal an act of a territorial legislature incorporating a church, suggests no limitation upon the power of Congress to dispose of Federal property. The dictum cited from *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 338 (1936), appears to be more a description of the responsibility of Congress than the statement of a judicial test, but, in any event, it is clear that the grants made in Public Law 31 are not for a "private or personal end."

In connection with these cases, it should be noted that it is not necessary for defendants to show that the action of Congress in disposing of Federal property is never under any circumstances subject to judicial review. It is enough to show, as California and Florida have, that under existing circumstances the action of Congress in granting to the States property having the special status of the offshore lands is not open to challenge.

Alabama's approving reference (Br. p. 56) to the swamp land grants provides an illustration of this broad and binding power of Congress in disposing of Federal property. Only fifteen States have received swamp land grants, and Alabama is one of them, having received nearly a half million acres.¹⁶ Thus, not only do such grants fail to give each State resources equal in character and value, but the majority of States have received nothing at all. Yet these grants are of unquestioned validity.¹⁷ They provide firm precedents for the action of Congress in passing Public Law 31, which vests in all the States ownership and management of the lands beneath navigable waters within their boundaries.

B. The Alleged Actions of Texas, Louisiana, and Florida Afford No Basis for an Exercise of This Court's Original Jurisdiction.

In the preceding sections it has been demonstrated that Alabama's complaint fails to state a justiciable case or controversy with respect to Public Law 31. In that connection we have shown (p. 10, *supra*) that there is no basis for Alabama's statements that the boundary claims of Texas, Louisiana, and Florida in the area between three and nine nautical miles off shore have been made "under color of Public Law 31." In this section we will first consider the boundary claims being made by Texas, Louisiana, and Florida, independently of Public Law 31. Thereafter we will consider the actions which those three States are alleged to be taking and threatening in the offshore waters against Alabama citizens.

¹⁶1952 Report of the Director of the Bureau of Land Management, Department of the Interior, p. 136.

¹⁷See annotation in 43 U. S. C. A., §§981-982.

1. ALABAMA HAS NO STANDING TO CHALLENGE THE ALLEGED BOUNDARY CLAIMS OF TEXAS, LOUISIANA, AND FLORIDA.

The submerged offshore lands outside historic State boundaries constitute an exclusively Federal area. This is established by Public Law 212, 83d Cong., 1st Sess., 67 Stat. 462 (Outer Continental Shelf Lands Act). This Act provides in Section 4(a) that the Constitution and Federal laws are to apply to the subsoil and sea-bed outside State boundaries¹⁸ to the same extent as if it "were an area of exclusive Federal jurisdiction." Under the Act the leasing and administration of this offshore area are delegated to the Secretary of the Interior (Sections 5 and 8), and all the revenues therefrom go into the Federal treasury (Section 9).

Even before the passage of Public Law 212, it was clear that the submerged land outside State jurisdiction was a Federal area. Presidential Proclamation No. 2667, dated September 28, 1945, 59 Stat. 884, declared that the natural resources of the subsoil and sea-bed of the Continental Shelf appertain to the United States, and Executive Order 9633 issued the same day placed the resources of that area under the jurisdiction of the Secretary of the Interior. 10 F. R. 12305. This assertion of jurisdiction contained in the Proclamation was confirmed by Section 9 of Public Law 31. Furthermore, Presidential Proclamation No. 2668, also issued September 28, 1945,

¹⁸By Section 3 of the Act the subsoil and sea-bed of the Continental Shelf lying seaward of "lands beneath navigable waters" (as that term is used in Public Law 31) are declared to appertain to the United States. The phrase "lands beneath navigable waters" is defined in Section 2 of Public Law 31 to include the area in coastal States within three geographical miles of the coast line, or within the State's historic seaward boundary if a State has an historic boundary farther than three miles from the coast line.

asserted the intention of the United States to establish conservation zones in the off-shore waters. 59 Stat. 885.

Thus it is evident that if Texas, Louisiana, and Florida have made invalid territorial assertions in the off-shore waters, they are invading Federal rights, not the rights of the State of Alabama. The territorial assertions, if they are improper, are claims to submerged lands under the jurisdiction and control of the United States, not of Alabama. The State of Alabama is no more directly injured by these territorial claims than she would be if the State of Virginia asserted a claim to a portion of the District of Columbia.¹⁹

The absence of any special injury to Alabama brings her complaint concerning territorial assertions by the defendants squarely within the principle of the cases cited in the first section of this brief, pp. 11 *et seq.*, *supra*. Those cases establish that this Court will refuse to exercise the original jurisdiction in the absence of a showing that there is an actual or imminently threatened invasion of the rights of the complainant State. As the Court said in *Massachusetts v. Missouri*, 308 U. S. 1, 15 (1939), to constitute a justiciable controversy, "it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence." See also *Arizona v. California*, 283 U. S. 423, 462 (1931). It is apparent that the

¹⁹There was at one time a protracted dispute between Virginia and the District of Columbia concerning their mutual boundary in the vicinity of the Potomac River. See *Smoot Sand & Gravel Corp. v. Washington Airport*, 283 U. S. 348 (1931); *Marine Ry. & Coal Co. v. United States*, 257 U. S. 47 (1921). It could hardly be contended that Alabama was injured by Virginia's claims.

State of Alabama has suffered no special wrong at the hands of the defendants; nor is she suing to vindicate a right held by her as a State.

Properly considered, defendants' alleged encroachment upon the Federal offshore area is of no more concern to Alabama than it is to the other States and to the public at large. It is well settled that this Court will not entertain cases where, as here, the complainant's injury is only that suffered in common with people generally. *Frothingham v. Mellon*, 262 U. S. 447, 487-488 (1923); see *Stark v. Wickard*, 321 U. S. 288, 304 (1944). In *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 132 (1940), this Court spoke of the "impropriety of judicial interpretations of law at the instance of those who show no more than a mere possible injury to the public."

The decisions cited by Alabama (Br. pp. 22-23) as showing her standing to sue are not in point, for the wrongful actions alleged in those cases had a territorial or otherwise special impact upon the complainant States. Thus each of the eight cases cited by Alabama to show that "this Court has allowed states to present disputes concerning their boundaries" (Br. p. 23) involved the boundary of the complainant State, not some other State. In the cases cited involving the diversion of flow from an interstate stream, the wrong alleged had the effect of reducing the water available *within the complainant State*. Likewise, the case involving the overflow of waters from Minnesota into North Dakota involved a direct impact in the nature of a trespass upon the complainant State.²⁰

²⁰In attempting to establish her claim of injury Alabama alleges that the boundary laws of Texas, Louisiana, and Florida "demean" her sovereignty. (Br. p. 18.) However, as we have shown, the area seaward of historic State boundaries is a Federal area, and invalid claims in that area invade Federal rights, not those of Alabama.

Indeed, we have found no case where a State has been permitted to sue in its sovereign capacity where there was no territorial or other special impact upon the complainant State. Cases involving such an impact, like those cited by Alabama, are clearly not authority for Alabama to challenge the alleged territorial claims of defendant States which do not affect Alabama's boundaries or have any special impact upon Alabama's sovereign interests.

2. THIS COURT SHOULD NOT ENTERTAIN ALABAMA'S REQUEST FOR AN INJUNCTION RESTRAINING TEXAS, LOUISIANA, AND FLORIDA FROM APPLYING THEIR STATUTES TO ALABAMA CITIZENS.

Alabama complains that Texas, Louisiana, and Florida are: (1) threatening Alabama citizens with discriminatory license fees and excise taxes and with the complete denial of the privilege of fishing in the offshore waters, and (2) requiring Alabama citizens, under pain and risk of severe penalties, to pay license fees and excise taxes for fishing in the Gulf of Mexico between three and nine nautical miles from the coast line of the respective States. Br. p. 30. Alabama, in her capacity as quasi sovereign and *parens patriae* for her citizens, seeks to enjoin the application of Texas, Louisiana, and Florida statutes in the offshore waters. However, it is clear that these allegations of the complaint do not warrant the exercise of the Court's original jurisdiction.

(a) *The Request for an Injunction is Premature and Unwarranted.* This Court has frequently emphasized that, in a suit between States, "Before this Court ought to intervene the case should be of serious magnitude, clearly and fully proved" *Missouri v. Illinois*, 200 U. S. 496, 521 (1906); *New York v. New Jersey*, 256 U. S. 296, 309 (1921); *North Dakota v. Minnesota*, 263 U. S.

365, 374 (1923); *Connecticut v. Massachusetts*, 282 U. S. 660, 669 (1931). "A state asking leave to sue another to prevent the enforcement of laws must allege, in the Complaint offered for filing, facts that are clearly sufficient to call for a decree in its favor." *Alabama v. Arizona*, 291 U. S. 286, 291 (1934). In another context the Court has emphasized that "Caution is appropriate against the subtle tendency to decide public issues free from the safeguards of critical scrutiny of the facts, through use of a declaratory summary judgment." *Eccles v. Peoples Bank*, 333 U. S. 426, 434 (1948).

Viewed in the light of these considerations, it is evident that Alabama is unwarranted or at least premature in bringing this complaint on behalf of its citizens against Texas, Louisiana, and Florida. First, with respect to the discriminatory fees and taxes and the denial of the privilege of fishing in the three-mile belt, the complaint concedes that there is only a threat of such action. (Complaint, paragraphs XXIV, XXVII, and XXX.) That such threatened injury is insufficient is shown by the following statement of the Court in *Nebraska v. Wyoming*, 325 U. S. 589, 608 (1945):

"... The argument is that the case is not of such serious magnitude and the damage is not so fully and clearly proved as to warrant the intervention of this Court under our established practice. *Missouri v. Illinois*, 200 U. S. 496, 521; *Colorado v. Kansas*, 320 U. S. 383, 393-394. The argument is that the potential threat of injury, representing as it does only a possibility for the indefinite future, is no basis for a decree in an interstate suit since we cannot issue declaratory decrees. *Arizona v. California*, 283 U. S. 423, 462-464, and cases cited.

"We fully recognize those principles."

Second, with respect to the assertions that the three States are now requiring Alabama citizens to pay taxes and excises in the offshore area between three and nine miles seaward from the coast line, there is only Alabama's bare allegation, unsupported by instances or details. (Complaint, paragraphs XXIV, XXVII, and XXX.) There is no showing that Texas, Louisiana, or Florida have enforced any statutes or penalties in that area against and over the protest of Alabama citizens. In the absence of such a showing, there is no justiciable controversy between the States, as this Court indicated in *Alabama v. Arizona*, 291 U. S. 286 (1934).²¹ In that case this Court denied Alabama leave to file a complaint seeking to enjoin five other States from enforcing their statutes against open market sales of products made by prison labor. In the course of the opinion holding that there was no "direct issue" between Alabama and the defendants, the Court said:

"In the absence of specific showing to the contrary, it will be presumed that no State will attempt to enforce an unconstitutional enactment to the detriment of another." 291 U. S. at 292.

²¹Alabama's reliance upon *Pennsylvania v. West Virginia*, 262 U. S. 553 (1923), is misplaced, for in at least two major respects that case differs significantly from the one now presented. First, under the West Virginia statute involved in the *Pennsylvania* case, the plaintiff States and their citizens were faced with a general and immediate fuel crisis, together with the loss of hundreds of millions of dollars in pipelines and other equipment. In contrast, Alabama's only claim of present injury is an alleged financial burden upon Alabama's fishing industry—a claim totally lacking in particularity. Second, discrimination was at the heart of the *Pennsylvania* case. The West Virginia statute was designed to give an absolute preference to West Virginia users of natural gas, and it was that discrimination which the Court declared unconstitutional. Here, however, Alabama suggests only that her citizens are "threatened" with discriminatory treatment by Texas, Louisiana, and Florida; the fees and taxes alleged to be presently in effect are not claimed to be discriminatory.

(b) *Alabama citizens have an adequate remedy in a lower court.* If Alabama citizens desire to challenge the enforcement of Texas, Louisiana, or Florida statutes in the waters offshore from those States, such an action can be conveniently and effectively brought in the Federal District Court of any of the States involved. The availability of such relief is demonstrated by the strikingly parallel case of *Toomer v. Witsell*, 334 U. S. 385 (1948). There, fishermen who were Georgia citizens sued South Carolina officials in a South Carolina Federal District Court to challenge the validity of South Carolina statutes which imposed a tax of one-eighth cent a pound on green shrimp taken in the marginal belt, required non-residents to pay a \$2,500 fee for each shrimp boat and residents to pay a fee of only \$25, and provided that shrimp boats fishing in the marginal belt must dock and unload at a South Carolina port.²²

The three-judge Federal District Court upheld the statutes, and a direct appeal was taken to this Court. This Court, after stating that it was agreed that *South Carolina officials were attempting to enforce the statutes against the Georgia fishermen*, upheld the right of the fishermen to bring the action, saying:

" . . . It is also clear that compliance with any but the income tax statute would have required payment of large sums of money for which South Carolina provides no means of recovery, that defiance would have carried with it the risk of heavy fines

²²The Georgia fishermen also sought to challenge the validity of a South Carolina statute imposing upon non-residents an income tax on profits from operations in the State. However, since the Georgia fishermen could pay this tax under protest and then sue in a State court to recover the amounts so paid, this Court held that there was an adequate remedy at law. 334 U. S. at 392.

and long imprisonment, and that withdrawal from further fishing until a test case had been taken through the South Carolina courts and perhaps to this Court would have resulted in a substantial loss of business for which no compensation could be obtained. Except as to the income-tax statute, we conclude that appellants sufficiently showed the imminence of irreparable injury for which there was no plain, adequate and complete remedy at law." 334 U. S. at 391-392.

On the merits, the Court sustained the validity of the one-eighth cent a pound tax²² but held that the discriminatory license-fee violated the privileges and immunities clause of the Constitution, and that the requirement of docking and unloading at a South Carolina port constituted an invalid burden on interstate commerce.

The precedent of *Toomer v. Witsell* makes it certain that Alabama citizens can challenge in local Federal courts any attempt by Texas, Louisiana, and Florida to enforce invalid statutes against them in the offshore waters. This Court has frequently indicated that the presence of such an adequate alternative remedy in a lower court is a sound ground for refusing to exercise the original jurisdiction. In *Massachusetts v. Missouri*, 308 U. S. 1 (1939), the Court declined to take jurisdiction of Massachusetts' suit against Missouri citizens because "In this instance it does not appear that Massachusetts is without a proper

²²The Court construed this tax to apply only to shrimp caught within the three-mile belt, but it left little doubt that Federal courts would consider, at the instance of citizens of other States, the validity of State statutes affecting the area outside the three-mile belt when a "concrete factual situation" is presented. 334 U. S. at 394.

and adequate remedy." 308 U. S. at 19.²⁴ In *Alabama v. Arizona, supra*, 291 U. S. 286 (1934), the Court based its denial of leave to file a complaint in part on the fact that the complaint "fails to show that . . . Alabama's assertion of right may not, or indeed will not, speedily and conveniently be tested by the contracting company that apparently is directly concerned, or by a seller of such goods." 291 U. S. at 292. In *Georgia v. Pennsylvania R. Co., supra*, 324 U. S. 439 (1945), although there was disagreement whether another suitable forum was available, it was common ground between the Court and the four dissenting Justices that it is appropriate for the Court to withhold the exercise of its jurisdiction "where there has been no want of another suitable forum to which the cause may be remitted in the interests of convenience, efficiency, and justice." 324 U. S. at 464-465.

In view of the fact that Alabama citizens have another suitable forum in which to challenge the statutes of Texas, Louisiana, and Florida, it appears that this Court should decline to exercise its original jurisdiction for that purpose. In that way this Court will be spared "the duty of making an independent examination of the evidence, a time-consuming process which seriously interferes with the discharge of our ever increasing appellate duties." Chief Justice Stone dissenting in *Georgia v. Pennsylvania R. Co., supra*, 324 U. S. at 470.

²⁴The Court noted, "With respect to the character of the claim now urged, we are not advised that Missouri would close its courts to a civil action brought by Massachusetts to recover the tax alleged to be due from the trustees." 308 U. S. at 20.

II

The United States Is An Indispensable Party and Has Not Consented to Be Sued.

The complaint asserts that the United States has paramount rights in and exclusive jurisdiction and control over the lands, minerals, and other natural resources lying seaward of the coast line of the defendant States. (Paragraphs IX, X, XIII, and XVI.) The prayer asks that Public Law 31 be declared to give defendant States no rights in "any lands, natural resources or marine animal or plant life which was, prior to the enactment of such law, vested by the Constitution in the United States to be exercised for the benefit of all the states and citizens of the United States." (Paragraph 2.) In her brief, Alabama asserts (p. 32) that the State and her citizens have an "equitable interest in the vast sums to be derived from the continued and ever-increasing development of the natural resources" described in the complaint. Alabama suggests that her share, at least of the impounded funds, is something between two and two and one-half per cent. (Br. p. 32.)

These allegations and assertions make it clear that the United States is at the center of this proceeding. The property involved, says Alabama, is under the jurisdiction and control of the United States. According to Alabama, the considered attempt of the Congress and the President to vest this property in the respective States is void, and the property remains in the United States. Alabama asserts an equitable interest in her equal share of the assets which have been and will be produced from the property.

Under those circumstances the United States is an indispensable party. *Arizona v. California*, 298 U. S. 558 (1936), is squarely in point to this effect. In that case, Arizona sought leave to file an original action asking for a judicial apportionment of all the unappropriated waters of the Colorado River. By the Boulder Canyon Project Act, the United States, as an exercise of its power to regulate navigation, had previously undertaken to impound, control, and in some instances dispose of the surplus water in the stream not already appropriated. The Court denied Arizona leave to file on the ground that the United States was an indispensable party. The language of the Court, in a unanimous opinion by Mr. Justice Stone, is directly applicable to Alabama's complaint.

" . . . The prayer is for a decree of equitable division of the privilege of future appropriation. The relief asked, and that which upon the facts alleged would alone be of benefit to Arizona, is a decree adjudicating to petitioners the 'unclouded . . . rights to the permanent use of' the water. *Such a decree could not be framed without the adjudication of the superior rights asserted by the United States.* The 'equitable share' of Arizona in the unappropriated water impounded above Boulder Dam could not be determined without ascertaining the rights of the United States to dispose of that water in aid and support of its project to control navigation, and without challenging the dispositions already agreed to by the Secretary's contracts with the California corporations, and the provision as well of §5 of the Boulder Canyon Project Act that no person shall be entitled to the stored water except by contract with the Secretary.

* . . . *

"Every right which Arizona asserts is so subordinate to and dependent upon the rights and the exercise of an authority asserted by the United States that no final determination of the one can be made without a determination of the extent of the other. Although no decree rendered in its absence can bind or affect the United States, that fact is not an inducement for this Court to decide the rights of the states which are before it by a decree which, because of the absence of the United States, could have no finality. * * * A bill of complaint will not be entertained which, if filed, could only be dismissed because of the absence of the United States as a party." (Emphasis added.) 298 U. S. at 570-572.

It is apparent here, as it was in *Arizona v. California*, that a "decree could not be framed without an adjudication of the superior rights" which are said to be held by the United States. In terms of the Court's language in the *Arizona* case, every right which Alabama asserts "is so subordinate to and dependent upon the rights and the exercise of an authority" assertedly held "by the United States that no final determination of the one can be made without a determination of the extent of the other." 298 U. S. at 571.

On the one hand, to uphold Alabama's claim would require much more than a mere restoration of the property to the Federal Government. Indeed, the assets would have to be impressed with a trust in Alabama's favor, and the United States would have to be deprived of its power of alienation with respect to this property. These claims bring Alabama squarely in conflict with the United States. On the other hand, to hold that the property is vested in the defendant States would amount to a denial of the

rights which Alabama claims are held by the United States.²⁰

The decision in *Arizona v. California* is in accord with a long line of decisions holding that the United States is an indispensable party in cases in which its property will be affected. In *Minnesota v. United States*, 305 U. S. 382 (1939), the State brought a condemnation action to acquire a right of way over lands which the United States owned in fee and held in trust for Indian allottees. In a unanimous opinion by Mr. Justice Brandeis, the Court held:

"The United States is an indispensable party defendant to the condemnation proceedings. A proceeding against property in which the United States has an interest is a suit against the United States

... It is confessedly the owner of the fee of the Indian allotted lands and holds the same in trust for the allottees. As the United States owns the fee of these parcels, the right of way cannot be condemned without making it a party." 305 U. S. at 386.

Likewise, in *Louisiana v. Garfield*, 211 U. S. 70 (1908), the Court held that the United States is an indispensable party in an action brought by the State against the Secretary of the Interior to establish title to lands claimed under swamp land grants. The Court said that there were involved questions, affecting the interests of the United States which "cannot be tried behind its back."

²⁰The United States is an indispensable party even though it owns less than all the property rights in the subject matter of a suit. *International Postal Supply Co. v. Bruce*, 194 U. S. 601, 606 (1904).

211 U. S. at 78. See also *New Mexico v. Lane*, 243 U. S. 52, 58 (1917).

The United States is no less indispensable even if it is assumed that it holds the property in trust for Alabama and its citizens. *McKay v. Kalyton*, 204 U. S. 458, 469 (1907); *Minnesota v. United States*, *supra*, 305 U. S. 382 (1939). In the *Minnesota* case the Court said that where the United States holds allotted lands in trust for Indians "it would seem clear that no effective relief can be given in a proceeding to which the United States is not a party and that the United States is therefore an indispensable party to any suit to establish or acquire an interest in the lands." 305 U. S. at 386, note 1. To the same effect is *Louisiana v. Jumel*, 107 U. S. 711, 722-723 (1883), an action against fiscal officers of a State, where the Court said, "If there is any trust, the State is the trustee, and unless the State can be sued the trustee cannot be enjoined."

The requirement that the United States be made a party cannot be circumvented by naming Federal officials as defendants. *Morrison v. Work*, 266 U. S. 481, 485-488 (1925).³⁰ Indeed, the very nature of the relief here prayed for against the individual defendants points up the fact that the interests of the United States are directly involved. Thus, in asking that the individual defendants be enjoined from "acquiescing" in the claimed assertions

³⁰"To interfere with its management and disposition of the lands or the funds by enjoining its officials, would interfere with the performance of governmental functions and vitally affect interests of the United States. It is therefore an indispensable party to this suit." 266 U. S. at 485-486.

of the defendant States (Complaint p. 30), Alabama is not seeking to prevent their acquiescence as individuals but rather as the heads of major departments of the Federal Government. Cf. *Louisiana v. McAdoo*, 234 U. S. 627, 632-633 (1914). Likewise, the request for an injunction with respect to the funds in the hands of the individual defendants is in reality an effort to control property held by the United States. *Goldberg v. Daniels*, 231 U. S. 218, 221-222 (1913); *International Postal Supply Co. v. Bruce*, 194 U. S. 601, 606 (1904); *Louisiana v. Jumel*, *supra*, 107 U. S. 711, 722-723 (1883); *Mine Safety Appliances Co. v. Forrestal*, 326 U. S. 371, 375 (1945).

The sum of the matter is that the United States is an indispensable party because any decree would affect the interests of the United States. Any decree deciding the rights of the States in the absence of the United States "could have no finality." See *Arizona v. California*, *supra*, 298 U. S. at 572. The United States has not been sued, and of course it cannot be sued without its consent. *Larson v. Domestic & Foreign Corp.*, 337 U. S. 682 (1949).²⁷ Where, as here, the complaint if filed would have to be dismissed because of the absence of the United States, the Court should refuse to entertain the complaint. *Louisiana v. McAdoo*, *supra*, 234 U. S. at 628; *Arizona v. California*, *supra*, 298 U. S. at 572.

²⁷The general rule that the United States cannot be sued without its consent is applicable to a suit by a State. *Kansas v. United States*, 204 U. S. 331, 342 (1907); *Arizona v. California*, *supra*, 298 U. S. at 568.

CONCLUSION

On the basis of the foregoing argument, the States of California and Florida respectfully urge that the motion of the State of Alabama for leave to file a complaint should be denied.

Respectfully submitted,

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JOHN D. MORIARTY,
*Special Assistant
Attorney General;*

*Attorneys for the State of
California.*

*Attorneys for the State of
Florida.*

December 2, 1953.

Affidavit of Service.

I, Leilani Kroll, being first duly sworn, certify that I am over the age of 18 years and not a party to the within action; that on December 2, 1953, I served a copy of the foregoing Objections upon each of the following named individuals by mailing a copy of the Objections to them, postage prepaid, at the following addresses:

Hon. Si Garrett
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. Fred S. LeBlanc
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

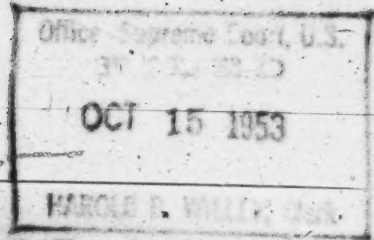
LEILANI KROLL.

State of California, County of Los Angeles—ss.

Subscribed and sworn to before me this 2nd day of December, 1953.

KATHRYN BUCKMAN,
Notary Public in and for Said County and State.

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IN THE
Supreme Court of the United States

October Term, 1953

No. Original.

STATE OF ALABAMA,

Complainant,

vs.

**STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.**

**Motion for Leave to File Objections and Brief in
Opposition to Motion for Leave to File Complaint
and for Oral Hearing.**

**RICHARD W. ERVIN
Attorney General of Florida**

**HOWARD S. BAILEY
Assistant Attorney General**

**FRED M. BURNS
Assistant Attorney General**

**JOHN D. MORIARTY
Special Assistant Attorney General
Attorneys for Mopant.**

**IN THE
Supreme Court of the United States**

October Term, 1953

No. Original.

STATE OF ALABAMA,

Complainant,

vs.

**STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,**

Defendants.

**Motion for Leave to File Objections and Brief in
Opposition to Motion for Leave to File Complaint
and for Oral Hearing.**

**The People of the State of Florida move for leave to
file objections and a brief in opposition to the motion
of the State of Alabama for leave to file a complaint,
and, because of the length and complexity of the com-
plaint and supporting brief, request that not less than
thirty (30) days be allowed for such purpose.**

The People of the State of Florida further move the Court to set said motion of the State of Alabama for an oral hearing after the filing of briefs.

RICHARD W. ERVIN
Attorney General of Florida

HOWARD S. BAILEY
Assistant Attorney General

FRED M. BURNS
Assistant Attorney General

JOHN D. MORLANTY
Special Assistant Attorney General
Attorneys for Movant.

October 14, 1953

I, Pauline H. Evans, being first duly sworn, certify that I am over the age of 18 years and not a party to the within action; that on October 14, 1953, I served a copy of the foregoing Motion upon each of the following named individuals by mailing a copy of the Motion to them, postage prepaid, at the following addresses:

Hon. Si Garrett
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. Fred E. Loblans
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Edmund G. Brown
Attorney General
State Capitol
Sacramento, California

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

PAULINE H. EVANS

State of Florida, County of Leon—ss.

Subscribed and sworn to before me this 14 day of October, 1953.

M. D. PHILLIPS
Notary Public, State of Florida at Large
My commission expires July 15, 1956.
Bonded by American Surety Co. of N. Y.

(Seal)

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1953.

No. _____, Original.

STATE OF ALABAMA,

Complainant,

vs.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY;
DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER
PRIEST,

Defendants.

**Motion for Leave to File Objections and Brief in
Opposition to Motion for Leave to File Complaint
and for Oral Hearing.**

EDMUND G. BROWN,
Attorney General of California;

WILLIAM V. O'CONNOR,
Chief Deputy Attorney General;

EVERETT W. MATTOON,
Assistant Attorney General;

GEORGE G. GROVER,
Deputy Attorney General,
600 State Building,
Los Angeles 12, California,
Attorneys for Movant.

IN THE
Supreme Court of the United States

October Term, 1953.
No., Original.

STATE OF ALABAMA,

Complainant,

vs.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLOR-
IDA; STATE OF CALIFORNIA; GEORGE M. HUMPHREY;
DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER
PRIEST,

Defendants.

**Motion for Leave to File Objections and Brief in
Opposition to Motion for Leave to File Complaint
and for Oral Hearing.**

The People of the State of California move for leave to file objections and a brief in opposition to the motion of the State of Alabama for leave to file a complaint, and, because of the length and complexity of the complaint and supporting brief, request that not less than thirty (30) days be allowed for such purpose.

IN THE
Supreme Court of the United States

October Term, 1953.
No., Original.

STATE OF ALABAMA,

Complainant,

vs.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLOR-
IDA; STATE OF CALIFORNIA; GEORGE M. HUMPHREY;
DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER
PRIEST,

Defendants.

**Motion for Leave to File Objections and Brief in
Opposition to Motion for Leave to File Complaint
and for Oral Hearing.**

The People of the State of California move for leave
to file objections and a brief in opposition to the motion
of the State of Alabama for leave to file a complaint,
and, because of the length and complexity of the complaint
and supporting brief, request that not less than thirty
(30) days be allowed for such purpose.

The People of the State of California further move the Court to set said motion of the State of Alabama for an oral hearing after the filing of briefs.

EDMUND G. BROWN,
Attorney General of California;

WILLIAM V. O'CONNOR,
Chief Deputy Attorney General;

EVERETT W. MATTOON,
Assistant Attorney General;

GEORGE G. GROVER,
Deputy Attorney General,
Attorneys for Movant.

By WILLIAM V. O'CONNOR,

October 2, 1953.

Affidavit of Service.

I, Leilani Kroll, being first duly sworn, certify that I am over the age of 18 years and not a party to the within action; that on October 2, 1953, I served a copy of the foregoing Motion upon each of the following named individuals by mailing a copy of the Motion to them, postage prepaid, at the following addresses:

Hon. Si Garrett
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Fred S. Leblanc
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Richard W. Ervin
Attorney General of Florida
State Capitol
Tallahassee, Florida

Hon. Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

LEILANI KROLL.

State of California, County of Los Angeles—ss.

Subscribed and sworn to before me this 2nd day of October, 1953.

KATHRYN BUCKMAN,
Notary Public in and for Said County and State.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

No. _____, Original

STATE OF ALABAMA

Complainant,

v.

**STATE OF TEXAS; STATE OF LOUISIANA; STATE OF
FLORIDA; STATE OF CALIFORNIA; GEORGE M. HUM-
PHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON;
IVY BAKER PRIEST,**

Defendants.

**Motion for Leave To File Objections and Brief
in Opposition to Motion for Leave To File
Complaint and for Oral Hearing**

JOHN BEN SHEPPERD
Attorney General of Texas

WILLIAM H. HOLLOWAY
Assistant Attorney General

IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

No. _____, Original

STATE OF ALABAMA

Complainant,

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF
FLORIDA; STATE OF CALIFORNIA; GEORGE M. HUM-
PHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON;
IVY BAKER PRIEST,

Defendants.

**Motion for Leave To File Objections and Brief
in Opposition to Motion for Leave To File
Complaint and for Oral Hearing**

The State of Texas, by its Attorney General, asks leave of the Court to file objections and a brief in opposition to the motion of the State of Alabama for leave to file a complaint, and, because of the complexity and length of the complaint and brief submitted therewith, it is requested that not less than thirty (30) days be allowed the State of Texas for such purpose.

The State of Texas further moves the Court to set Alabama's motion for leave to file a complaint for an oral hearing after the filing of briefs.

JOHN BEN SHEPPERD
Attorney General of Texas

WILLIAM H. HOLLOWAY
Assistant Attorney General

October 12, 1953

Certificate of Service

I, William H. Holloway, certify that I have served a copy of the foregoing Motion upon each of the following named individuals by mailing a copy of same to them, postage prepaid, to the following addresses:

Hon. St Garrett
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Edmund G. Brown
Attorney General of California
State Capitol
Sacramento, California

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Fred S. Leblanc
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Richard W. Ervin
Attorney General of Florida
State Capitol
Tallahassee, Florida

Hon. Herbert Brownell, Jr.
Attorney General of the
United States
Department of Justice
Washington, D. C.

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

WILLIAM H. HOLLOWAY

State of Texas, County of Travis

Subscribed and sworn to before me this..... day
of October, 1953.

Notary Public in and for
Said County and State.

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OCT 14 1953

HAROLD B. WILLEY, Clerk

IN THE
Supreme Court of the United States
OCTOBER TERM, 1953

No. . . . , Original

STATE OF ALABAMA, *Complainant*,

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
MCKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

**MOTION FOR LEAVE TO FILE OBJECTIONS AND BRIEF
IN OPPOSITION TO MOTION FOR LEAVE TO FILE
COMPLAINT AND FOR ORAL HEARING.**

FRED S. LEBLANC,
*Attorney General,
State of Louisiana;*

JOHN L. MADDEN,
*Assistant Attorney General,
State of Louisiana;*

BAILEY WALSH,
*Special Assistant Attorney
General,
State of Louisiana.*

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No., Original

STATE OF ALABAMA, *Complainant*,

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

**MOTION FOR LEAVE TO FILE OBJECTIONS AND BRIEF
IN OPPOSITION TO MOTION FOR LEAVE TO FILE
COMPLAINT AND FOR ORAL HEARING.**

The State of Louisiana, appearing herein through its Attorney General and acting pursuant to the authority vested in him by the constitution of said State, moves this Honorable Court for leave to file objections and a brief in opposition to the motion of the State of Alabama for leave to file a complaint in the above entitled matter.

The State of Louisiana represented as aforesaid suggests to the Court that the complaint above mentioned is highly complex and complicated and for such reason requests that it be allowed a period of not less than forty (40)

days for the purpose of preparing and filing such objections.

The State of Louisiana further moves the Court to set the motion of the State of Alabama for oral hearing after the filing of briefs.

FRED S. LEBLANC,
Attorney General,
State of Louisiana;

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana;

BAILEY WALSH,
Special Assistant Attorney
General,
State of Louisiana.

By John L. Madden

October 13, 1953.

Affidavit of Service

I, John L. Madden, Assistant Attorney General of the State of Louisiana and of counsel for said State in the above and foregoing motion, being first duly sworn, certify that I have served a copy of said motion upon each of the following named persons by mailing a copy of the motion to them, postage prepaid, prior to the filing of said motion, and at the following addresses:

Hon. Si Garrett
Attorney General of
Alabama
State Capitol
Montgomery, Alabama

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. Edmund G. Brown
Attorney General of
California
State Building
San Francisco, California

Hon. Richard W. Ervin
Attorney General of
Florida
State Capitol
Tallahassee, Florida

Hon. George M. Humphrey
Secretary of the Treasury
Department of the
Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the
United States
Department of the
Treasury
Washington, D. C.

Hon. Herbert Brownell, Jr.
Atty. General of the
United States
Department of Justice
Washington, D. C.

/s/ John L. Madden
JOHN L. MADDEN

City of Washington, District of Columbia—ss:

Subscribed and sworn to before me this 12th day of
October, 1953.

BYRD C. REED
Notary Public in and for
Said City and District.

INDEX

	Page
Statement.....	2
Argument.....	4
I. The complainant has no standing to sue.....	5
A. As a sovereign state, Alabama has no standing to sue.....	5
1. Alabama is not a beneficiary of any trust of the offshore lands or their proceeds.....	9
2. Alabama's sovereign right to equal footing cannot be violated by any inequality in width of marginal seas of, or wealth of assets in the areas claimed by, the defendant States as compared to the areas within Alabama's boundaries.....	13
B. Alabama has no standing to sue as <i>parens patriae</i>	18
II. The complaint fails to state a claim on which relief can be granted against these defendants.....	22
III. This is in legal effect a suit against the United States, which has not consented to such suit.....	23
IV. The United States is an indispensable party.....	26
Conclusion.....	42

CITATIONS

Cases:	
Alabama v. Arizona, 291 U. S. 296.....	33
Alabama State Federation of Labor v. McAdory, 235 U. S. 430.....	8
American Dredging Co. v. Cochran, 190 F. 2d 106.....	37
Appleby v. City of New York, 371 U. S. 304.....	24, 25, 29
Arizona v. California, 293 U. S. 341.....	22
Arizona v. California, 298 U. S. 535.....	42
Bullnap v. Schild, 161 U. S. 10.....	24, 25, 42
Buran, Ltd. v. Los Angeles, 290 U. S. 10.....	34
Carr v. United States, 95 U. S. 432.....	26
Christian v. Atlantic & N. C. E. R. Co., 130 U. S. 232.....	26
Cofman v. Byers Corporation, 320 U. S. 316.....	8
Cox v. State, 144 N. Y. 306.....	29
Cummings v. Deutsche Bank, 300 U. S. 115.....	25
Cunningham v. Mason & Brunswick E. R. Co., 109 U. S. 445.....	25

Cases—Continued

	Page
<i>Dowdell v. United States</i> , 228 U. S. 342.....	29
<i>Florida v. Mellon</i> , 272 U. S. 12.....	7, 19, 20, 22
<i>Ford Co. v. Dept. of Treasury</i> , 228 U. S. 420.....	25
<i>Georgia v. Pennsylvania R. Co.</i> , 226 U. S. 459.....	19, 20, 22
<i>Georgia R. Co. v. Railroad</i> , 242 U. S. 269.....	27
<i>Goldberg v. Daniels</i> , 221 U. S. 519.....	25
<i>Great Northern Ins. Co. v. Reed</i> , 225 U. S. 47.....	25
<i>Habersing v. Davis</i> , 221 U. S. 519.....	21
<i>Hopkins v. Clemons College</i> , 221 U. S. 423.....	25
<i>Hopkins Savings Assn. v. Cleary</i> , 226 U. S. 315.....	20
<i>Illinois Central Railroad v. Chicago</i> , 179 U. S. 644.....	20
<i>Illinois Central Railroad v. Illinois</i> , 148 U. S. 357....	14, 25, 26, 30
<i>Leach v. Davenport</i> , 12 Wall. 207.....	23
<i>Leach v. Deller</i> , 220 U. S. 721.....	25
<i>Leachford v. Flatts Iron Works</i> , 225 U. S. 491.....	25
<i>Leyden v. Domestic & Foreign Corp.</i> , 227 U. S. 622....	23, 26, 27
<i>Leather v. White</i> , 220 U. S. 292, affirming 204 Fed. 477....	25
<i>Light v. United States</i> , 220 U. S. 622.....	10
<i>Louisiana v. Gayfield</i> , 211 U. S. 70.....	25, 41
<i>Louisiana v. McAdoo</i> , 224 U. S. 497.....	25
<i>Louisiana v. Mississippi</i> , 222 U. S. 1.....	16
<i>Louisiana v. Mississippi</i> , 222 U. S. 422.....	16
<i>Massachusetts v. Mellon</i> , 223 U. S. 447.....	7, 12, 19, 20
<i>McClary v. Sullivan</i> , 2 Wheat. 222.....	22
<i>Mine Safety Co. v. Foreward</i> , 226 U. S. 571.....	41
<i>Minnesota v. Hibbard</i> , 125 U. S. 572.....	25, 26
<i>Minnesota v. United States</i> , 225 U. S. 222.....	25, 41
<i>Missouri v. Holland</i> , 220 U. S. 416.....	21
<i>Morrison v. Ward</i> , 222 U. S. 421.....	20
<i>Nagamb v. Hibbard</i> , 222 U. S. 473.....	25, 27
<i>New Jersey v. August</i> , 225 U. S. 222.....	7
<i>New Mexico v. Lane</i> , 222 U. S. 22.....	25
<i>North Carolina v. Temple</i> , 124 U. S. 22.....	25, 27
<i>Oregon v. Hibbard</i> , 222 U. S. 62.....	25, 26
<i>Pennsylvania v. West Virginia</i> , 222 U. S. 222.....	19
<i>Philadelphia Co. v. Shuman</i> , 222 U. S. 422.....	27
<i>Roberts v. Leavenworth</i> , 222 U. S. 222, affirmed 221 U. S. 222.....	27
<i>Roberts v. Leavenworth</i> , 222 U. S. 222.....	11, 20
<i>Roberts v. Leavenworth</i> , 222 U. S. 222.....	25
<i>Roberts v. Leavenworth</i> , 222 U. S. 222.....	14, 17
<i>Roberts v. Leavenworth</i> , 222 U. S. 222.....	6
<i>United States v. Alabama</i> , 222 U. S. 274.....	25
<i>United States v. Baker</i> , 227 U. S. 1.....	21
<i>United States v. California</i> , 222 U. S. 22.....	14, 15, 16, 19, 24
<i>United States v. Galt</i> , 14 Fed. 222.....	25
<i>United States v. San Francisco</i> , 222 U. S. 16.....	25
<i>United States v. Tamm</i> , 222 U. S. 727.....	14, 17
<i>United States v. Willow River Co.</i> , 224 U. S. 499.....	20

III

Constitution, Statutes and Treaty:

Page

Constitution of the United States:

Art. III, § 2, Cl. 2.....	2, 6
Art. IV, § 2.....	23
Act of Aug. 6, 1846, 9 Stat. 66, amending the Act of Apr. 18, 1824, 2 Stat. 281.....	16
Alabama Enabling Act (March 3, 1819, 2 Stat. 489):	
Section 6.....	17
Section 7.....	17
Ga. Code Ann., § 15-101.....	15
Ga. Const. of 1793, Art. I, § 23.....	14
Gadsden Purchase (10 Stat. 1031).....	12
Louisiana Purchase, The (8 Stat. 300).....	12
R. I. Gen. Laws (1936), tit. I, c. 1, § 1.....	15
R. I. Gen. Stats. (1872), tit. I, c. 1, § 1.....	15
S. C. Code (1952), § 30-1.....	14
S. C. Rev. Stats. (1872), Pt. I, tit. I, c. 1, § 1.....	14
Submerged Lands Act (Public Law 31, 83d Cong., 1st Sess., c. 65).....	3
Section 2 (b).....	31
Section 3 (a).....	31
Swamp Land Act of September 28, 1850 (9 Stat. 519):	
Section 4.....	17
Tex. Repub., 1 Laws 133, adopting the boundary of the American-Spanish treaty, 3 Stat. 253.....	15
Treaty of Guadalupe Hidalgo (9 Stat. 923).....	12
2 Stat.:	
245.....	12
701.....	15
724.....	12
9 Stat. 245.....	15
20 Stat. 481.....	15
47 Stat.:	
36.....	23
41.....	23
52.....	23
53.....	23
54.....	23
55.....	23
122.....	23
222.....	23
20 U. S. C. 1261.....	2

Miscellaneous:

Gannett, <i>Boundaries of the United States</i> (2d ed., 1904, H. Doc. 679, 58th Cong., 2d Sess.).....	12-13, 15
Richard, <i>History of the Public Land Policies</i> (1939), pp. 273, 275, 280.....	17
Island, <i>Marginal Seas Around the States</i> (1940), 3 La. L. Rev. 243-268, 436-478.....	15
Watkins, <i>Dis. Laws of Ga.</i> (1909), 20.....	14

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. —, ORIGINAL

STATE OF ALABAMA, COMPLAINANT

v.

**STATE OF TEXAS; STATE OF LOUISIANA; STATE OF
FLORIDA; STATE OF CALIFORNIA; GEORGE M.
HUMPHREY; DOUGLAS MCKAY; ROBERT B.
ANDERSON; IVY BAKER PRIEST, DEFENDANTS**

**OPPOSITION OF DEFENDANTS GEORGE M. HUMPHREY,
DOUGLAS MCKAY, ROBERT B. ANDERSON AND IVY
BAKER PRIEST TO COMPLAINANT'S MOTION FOR LEAVE
TO FILE COMPLAINT**

**Defendants George M. Humphrey, Douglas
McKay, Robert B. Anderson and Ivy Baker
Priest oppose the complainant's motion for leave
to file its complaint against said defendants, on
the following grounds:**

- 1. The complainant has no standing to sue;**
- 2. The complaint fails to state a claim on
which relief can be granted against these de-
fendants;**

3. The suit is, in legal effect, one against the United States, which has not consented to be sued; and
4. The United States is an indispensable party.

STATEMENT

The State of Alabama, as complainant, seeks to invoke the original jurisdiction of this Court under Article III, Section 2 of the United States Constitution and 28 U. S. C. 1251. The complaint names as defendants the States of California, Louisiana, Texas and Florida, and George M. Humphrey, Secretary of the Treasury, Douglas McKay, Secretary of the Interior, Robert B. Anderson, Secretary of the Navy, and Ivy Baker Priest, Treasurer of the United States. For relief the complaint seeks a decree declaring that the Submerged Lands Act (Public Law 31, 83d Cong., 1st Sess., c. 65) is unconstitutional, and that it gives to the defendant States no rights in the submerged lands or resources of the marginal sea and no rights beyond three miles from their coasts; enjoining the individual defendants from making any payments of funds derived from the submerged lands, and requiring the defendant States to restore any such payments already received by them; enjoining the defendant States from asserting control over the submerged lands and resources of the sea bed within nine miles of their coasts on the Gulf or within three miles of

their coasts elsewhere, and enjoining the individual defendants from acquiescing in such assertions; enjoining Texas, Louisiana and Florida from asserting control over marine animal and plant life in the waters overlying said lands, except for non-discriminatory police regulations within three miles of the coast, and declaring other regulations with respect thereto unconstitutional and void; and enjoining Texas, Louisiana and Florida from asserting jurisdiction over the high seas more than three miles from the Gulf of Mexico.

Apart from Paragraphs XII, XV, XVIII, XXIV, XXVII, XXX and XXXVI of the complaint and Paragraph 7 of the prayer for relief, to which special reference will be made below, the allegations of the complaint may be summarized as averring that the States and individual defendants are acting or intend to act as authorized, or required, by the Submerged Lands Act, the States by exercising dominion over the submerged lands granted thereby, and the individual defendants by acquiescing in such acts and in paying over, or intending to pay over, funds derived from the submerged lands required by the Act to be paid over. In addition, it is alleged that Texas, Louisiana and Florida are asserting dominion over an area extending three leagues into the Gulf of Mexico and that the individual defendants are acquiescing in that assertion.

On October 26, 1953, this Court granted the defendants forty days for the filing of objections to Alabama's motion for leave to file its complaint.

ARGUMENT

In these objections we shall not address ourselves at all to the allegations of Paragraphs XII, XV, XVIII, XXIV, XXVII, XXX and XXXVI of the complaint nor to Paragraph 7 of the prayer for relief. Those paragraphs concern themselves solely with alleged rights of citizens of Alabama to fish off the coasts of Texas, Louisiana, and Florida; with allegedly illegal infringements or threatened infringements on those rights; and with a prayer for an injunction against such infringements. No action or acquiescence by the Federal officers is alleged and no relief asked against them in this particular.¹ If, as these defendants contend, the remaining allegations of the complaint, which do concern them, likewise fail to state claims entitling Alabama to relief against these defendants, then

¹The constitutionality and interpretation of the Submerged Lands Act is not involved in these averments, since the allegedly illegal acts are charged to be occurring and threatened within the political boundaries of the defendant States before the passage of the Act as well as within the area which those States are alleged to claim under the Act. Therefore, insofar as the sufficiency of this part of the complaint or the standing of the complainant to sue on this issue is concerned, the constitutionality or interpretation of the Submerged Lands Act is in no way involved.

leave to file the complaint should be denied.

I

THE COMPLAINANT HAS NO STANDING TO SUE

Alabama asserts that it has standing to sue both because of its sovereign capacity as a State (Paragraph XXXIV) and as quasi-sovereign and *parens patriae* for its citizens (Paragraph XXXV). However, on the facts alleged it appears that in neither capacity does Alabama have a legal interest which can be the basis of an original action in this Court, and this is true quite apart from the constitutionality of the Submerged Lands Act or the legality of the acts or intended acts of the defendants. For the purposes of this point let it be assumed, for the sake of the argument, that Congress exceeded its constitutional power in granting the submerged lands to the States, and let it be further assumed, again without admitting that it is so, that the defendant States and Federal officers are misinterpreting the Act in their assumptions of dominion or acquiescence therein. Even on those assumptions Alabama's complaint should not be permitted to be filed since it fails to show how Alabama is injured or has any standing to sue.

A. AS A SOVEREIGN STATE, ALABAMA HAS NO STANDING TO SUE

The constitutional provision vesting original jurisdiction in this Court in cases "in which a

State shall be Party" (Art. III, Sec. 2, Clause 2) does not obviate the necessity of there being a case or controversy in which the complainant shall have a justiciable interest. In cases where states have attacked the constitutionality of Federal legislation, this Court has more than once found it necessary to dismiss the complaints because the complainants were not proper parties plaintiff. For example, in *Texas v. Interstate Commerce Commission*, 258 U. S. 158, when Texas attempted to attack the constitutionality of the legislation establishing the Railroad Labor Board, this Court stated at page 162:

The bill is of unusual length, sixty-five printed pages. Much of it is devoted to the presentation of an abstract question of legislative power—whether the matters dealt with in several of the provisions of Titles III and IV fall within the field wherein Congress may speak with constitutional authority, or within the field reserved to the several States. The claim of the State, elaborately set forth, is that they fall within the latter field, and therefore that the congressional enactment is void. Obviously, this part of the bill does not present a case or controversy within the range of the judicial power as defined by the Constitution. It is only where rights, in themselves appropriate subjects of judicial cognizance, are being, or about to be, affected prejudicially by the application or enforcement of a statute that its validity may be called in question by a suitor and deter-

mined by an exertion of the judicial power. *Georgia v. Stanton*, 6 Wall. 50, 73, *et seq.*; *Muskra v. United States*, 219 U. S. 346, 361; *Stearns v. Wood*, 236 U. S. 75, 78.

Again in *New Jersey v. Sargent*, 269 U. S. 328, where the validity of the Federal Water Power Act was in question, the Court stated at page 334:

On reading the present bill we are brought to the conclusion, first, that its real purpose is to obtain a judicial declaration that, in making certain parts of the Federal Water Power Act applicable to waters within and bordering on the State of New Jersey, Congress exceeded its own authority and encroached on that of the State, and secondly, that the bill does not show that any right of the State, which in itself is an appropriate subject of judicial cognizance, is being, or about to be, affected prejudicially by the application or enforcement of the Act.

See also *Massachusetts v. Mellon*, 262 U. S. 447; *Florida v. Mellon*, 273 U. S. 12.*

* It goes without saying that it is not enough for Alabama merely to allege that the Submerged Lands Act is unconstitutional (see Paragraph XXXVIII of the complaint) or to pray for a declaration to that effect (see Paragraphs 1, 2, and 3 of the prayer). This Court has repeatedly held that it will not render a declaratory judgment on the constitutionality of an act of Congress except when a justiciable issue is presented on which substantive relief against the defendants can be based. Thus in *Massachusetts v. Mellon*, 262 U. S. 447, the Court said at 488:

We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitu-

The complainant seeks to establish its right to sue as a sovereign on two bases, both of which it relates to its equal footing with the other states. First, it appears to argue that it, and the other states, have equal undivided interests in all of the submerged lands over which the Supreme Court has held that the Federal government has paramount rights, and that the Federal government is committing a breach of trust when it attempts to divide the lands among the coastal states. Its second argument appears to be that

tional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right.

And the federal courts exercise the same limitation on the exercise of their jurisdiction where a declaratory judgment is sought as to the interpretation of a statute. Thus in *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, the Court said at 462:

The declaratory judgment procedure may be resorted to only in the sound discretion of the Court and where the interests of justice will be advanced *and an adequate and effective judgment may be rendered.* [Italics added.]

And in *Coffman v. Breeze Corporations*, 323 U. S. 316, 324:

The declaratory judgment procedure is available in the federal courts only in cases involving an actual case or controversy * * * where the issue is actual and adversary * * * and it may not be made the medium for securing an advisory opinion in a controversy which has not arisen.

the allocation of the submerged lands to the coastal states has violated Alabama's right to equal footing since, under the Act, Texas, Louisiana, and Florida claim three leagues, whereas Alabama's boundary is but three miles, and also since the defendant states have been given allegedly more valuable lands than has Alabama. Admitting that Alabama, like all of the states, has a right to "equal footing," neither of its present contentions has any merit.

1. Alabama is not a beneficiary of any trust of the offshore lands or their proceeds

The complaint alleges that the United States holds the paramount rights in the submerged lands off the shores of California, Texas, Louisiana and Florida, the resources therein, and the revenues derived therefrom, "as trustee for all the states and citizens of the United States, including the State of Alabama and the citizens thereof" (Paragraphs IX, X, XIII, and XVI). It then alleges that pursuant to the provisions of the Submerged Lands Act, the various defendants are committing breaches of that trust (Paragraphs XXI, XXIII, XXVI, XXIX, and XXXI-XXXIII). In Paragraph XXXIV (A) it is alleged that Alabama's right to equal footing is being impaired by this breach of trust, thus giving Alabama standing to sue. However, the claim of trust is not supported by any factual allegations, resting solely on the assertion that the

trust exists as a matter of law. But neither the complaint nor the supporting brief cites any law, constitutional, statutory or decisional, to support Alabama's contention, and it is submitted that none can be found.

While the interest of the United States in property held by it has sometimes been described as a trust, the trust has generally been spoken of as existing for the benefit of the people, rather than the States as such. For example, in *Light v. United States*, 220 U. S. 523, 537, the Court said, "All the public lands of the nation are held in trust for the people of the whole country." *United States v. Trinidad Coal Co.*, 137 U. S. 160. And it is not for the courts to say how that trust shall be administered." In *United States v. California*, 332 U. S. 19, the submerged lands here in question were assumed to be held "in trust" when the Court said at page 40, "The Government, which holds its interests here as elsewhere in trust for all the people, * * *"

Actually, although the cases may use the trust language, it is language not used in a technical sense, but only to indicate that the property is held in the public interest. The authorities cited under Point II below to support the proposition that the United States has absolute power to dispose of property held by it (see pp. 22-25, 29-30, *infra*), amply demonstrate that federal property is not held "in trust" as that term is used in private law. And in any event, if there be a trust of

any kind, the cestui is the entire people and not any State or group of States.*

*The language of *Shively v. Bowlby*, 152 U. S. 1, might at first glance be misinterpreted to mean that the lands are held in trust for the states, when the Court stated (pages 49 to 50):

The Congress of the United States, in disposing of the public lands, has constantly acted upon the theory that those lands, whether in the interior, or on the coast, above high water mark, may be taken up by actual occupants, in order to encourage the settlement of the country; but that the navigable waters and the soils under them, whether within or above the ebb and flow of the tide, shall be and remain public highways; and, being chiefly valuable for the public purposes of commerce, navigation and fishery, and for the improvements necessary to secure and promote those purposes, shall not be granted away during the period of territorial government; but, unless in case of some international duty or public exigency, shall be held by the United States in trust for the future States, and shall vest in the several States, when organized and admitted into the Union, with all the powers and prerogatives appertaining to the older States in regard to such waters and soils within their respective jurisdictions; in short, shall not be disposed of piecemeal to individuals as private property, but shall be held as a whole for the purpose of being ultimately administered and dealt with for the public benefit by the State, after it shall have become a completely organized community.

It is apparent that whatever trust was found to exist was for the future state which should encompass the particular lands, not for the states as a whole. Moreover, though called a trust, the interest held by the United States was held to be such that it could alienate the lands involved, the Court stating (page 48):

We cannot doubt, therefore, that Congress has the power to make grants of lands below high water mark of navigable waters in any Territory of the United States, whenever it becomes necessary to do so in order

Alabama's secondary contention (Brief, p. 42), that it has an interest in the submerged lands because "The fruits of the conduct of the foreign relations of the United States must be available to all the United States," is refuted by the whole course of our national history. The Louisiana Purchase (8 Stat. 200), although paid for with funds derived at least in part from the existing States (*cf.* 2 Stat. 245), was not held for the benefit of those States, but was divided into new territories and States. The area between the Pearl and Perdido Rivers, south of the 31st Parallel, acquired either as part of the Louisiana Purchase or from Spain, was not held for all the States but was added to Mississippi Territory (2 Stat. 734), later divided between the States of Mississippi and Alabama. Presumably Alabama does not regard that as an unconstitutional infringement on rights of the other States. The area ceded by Mexico in 1848 by the Treaty of Guadalupe Hidalgo (9 Stat. 922) was not held for the benefit of the existing States, but was divided into new territories and States; and the Gadsden Purchase (10 Stat. 1031) was not held for all the States but was added to the territories of Arizona and New Mexico. See Gannett, *Boundaries of the*

to perform international obligations, or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to the objects for which the United States hold the Territory.

United States (3d ed. 1904, H. Doc. 678, 58th Cong., 2d Sess.), 19-25, 109-113, 123-136, 139. Yet all of these acquisitions were unquestionably the "fruits of the conduct of the foreign relations of the United States."

On analysis it seems clear that neither under the right of equal footing with the other States nor otherwise does Alabama have any more direct interest in the submerged lands adjacent to other States than it has in other property of those States, or of the United States, or of funds in the United States Treasury. It is not conceivable that this Court would have found that Massachusetts had standing to sue in *Massachusetts v. Mellon*, 262 U. S. 447, had it adopted the form of alleging that the funds which the defendant intended to expend were Treasury funds held in trust for all of the States. It is submitted that insofar as a sovereign state's interest in Federal assets is concerned, this case is indistinguishable from *Massachusetts v. Mellon*.

2. *Alabama's sovereign right to equal footing cannot be violated by any inequality in width of marginal seas of, or wealth of assets in the areas claimed by, the defendant States as compared to the areas within Alabama's boundaries*

Another of Alabama's arguments is that Alabama itself has a historic boundary extending only three miles from shore, while Texas, Louisiana, and Florida claim three leagues; and, that while the defendant States, or some of them,

have valuable natural resources,' the State of Alabama does not have its pro rata share. On this basis Alabama apparently asserts that the Submerged Lands Act gives too much to the defendant states and too little to Alabama, thus allegedly violating its constitutional right to "equal footing" (Paragraph XXXIV (B)).

This contention is also plainly unsound. "Equal footing" relates only to the political rights and sovereignty of a State, not to its property rights or to its boundaries. *United States v. Texas*, 339 U. S. 707, 716; *Stearns v. Minnesota*, 179 U. S. 223, 245. As this Court has said, "There can be no distinction between the several States of the Union in the character of the jurisdiction, sovereignty and dominion which they may possess and exercise over persons and subjects within their respective limits." *Illinois Central Railroad v. Illinois*, 146 U. S. 387, 434. But there is no necessary equality as to the territorial extent of their limits. Thus, even the original States have not claimed equal limits in the sea. For example, South Carolina has always claimed as its eastern boundary "the Atlantic Ocean" (first specified in Rev. Stat. S. C. (1872), Pt. I, tit. I, c. 1, § 1; now provided by S. C. Code (1953) § 39-1). Georgia originally claimed only to the ocean (Ga. Const. of 1798, Art. I, § 23; *Watkins, Dig. Laws of Ga.* (1800) 35), and now

* Paragraph XIX of the complaint fixes their value at in excess of \$50,000,000,000.

claims only three *English* miles from low water, approximately .45 mile less than the three *geographic* miles more commonly used (Ga. Code Ann., § 15-101). California has also claimed only three *English* miles. *United States v. California*, 332 U. S. 19, 23. Rhode Island has, since 1872, claimed one marine league from the seashore at *high* water mark, rather than from *low* water mark as is commonly done (R. I. Gen. Stats. (1872) tit. I, c. 1, § 1; R. I. Gen. Laws (1938), tit. I, c. 1, § 1). For a collection of the various maritime boundaries claimed by coastal States, see Ireland, *Marginal Seas Around the States* (1940), 2 La. L. Rev. 252-293, 436-478, at 283-293 and 436-476.

Similar lack of uniformity exists as to river boundaries between States. The Potomac boundary between Virginia and Maryland is the low water mark on the Virginia side (see 20 Stat. 481; Gannett, *Boundaries of the United States* (3d ed., 1904, H. Doc. 678, 59th Cong., 2d Sess.) 89-92). Although the western boundary of Louisiana is the center of the Sabine River (2 Stat. 701), Texas came into the Union with its eastern boundary at the western bank of that river (1 Laws Repub. Tex. 123, adopting the boundary of the American-Spanish treaty, 8 Stat. 232), and it was not until 1848 that Congress permitted Texas to extend its eastern boundary to meet the Louisiana line in the center of the stream (9 Stat. 245). Other examples could be cited, but these will suffice to show that

the territorial extent of jurisdiction over boundary waters, whether ~~coastal~~ or inland, has never been considered a matter as to which States must stand on an equal footing. It necessarily follows that the "equal footing" principle does not give one State any standing to contest the nonadjacent boundaries of another State.*

Even less meritorious is the suggestion that Alabama's "equal footing" prevents Congress from giving to other States greater or more valuable rights of a proprietary nature in the marginal sea than it has given to Alabama. The mere fact that this Court has held such rights to belong in the first instance to the United States as an incident of its national sovereignty (*United States v. California*, 332 U. S. 19) demonstrates that they are not a constitutional attribute of state sovereignty. Consequently, there can be no constitutional guarantee of equality among the States regarding them. So far as the States are legally concerned, Congress, assuming it otherwise has power to dispose of these lands, can give them to some States and not to others, just as in 1846 it gave to Tennessee, alone of the public land States, all the public lands within its borders (Act of Aug. 6, 1846, 9 Stat. 66, amending the Act of

*Of course, where a common boundary is in dispute, a State has standing to sue the other State. E. g., *Louisiana v. Mississippi*, 202 U. S. 1; 444, 229 U. S. 458; and other cases cited in Alabama's brief, p. 23.

Apr. 18, 1806, 2 Stat. 381), and from time to time relinquishes federal enclaves or public lands to some states while retaining others." "Equal footing" gives Alabama no standing to complain that its marginal sea is less valuable or less extensive than Louisiana's or California's. The doctrine "does not, of course, include economic stature or standing. There has never been equality among the States in that sense." *United States v. Texas*, 339 U. S. 707, 716.'

* The Alabama Enabling Act (March 2, 1819, 3 Stat. 489) made the following provisions for land grants to the State: § 6 (p. 491)—For schools, Section 16, or lieu lands, in every township; All salt springs and appurtenant lands, not over 36 sections in all; For a seminary of learning, 36 sections, in addition to 36 sections already given the Territory; § 7 (p. 492)—For a seat of government, 1620 acres. The Swamp Land Act of September 28, 1850 (9 Stat. 519) § 4 granted to the States qualifying all swamp and overflowed lands within their boundaries. According to Hibbard, *History of the Public Land Policies* (1939), p. 273, fifteen states only received benefits under the Swamp Land Act and up to June 30, 1922, Alabama received patents to 418,633.53 acres (p. 275). The same author states that Alabama has received 911,627 acres of school land (p. 323).

* The Court goes on to say in the *Texas* opinion (at p. 716): "Some States when they entered the Union had within their boundaries tracts of land belonging to the Federal Government; others were sovereigns of their soil. Some had special agreements with the Federal Government governing property within their borders. See *Stearns v. Minnesota*, *supra*, [179 U. S. 223] pp. 243-245. Area, location, geology, and latitude have created great diversity in the economic aspects of the several States. The requirement of equal footing was designed not to wipe out these diversities but to create parity as respects political standing and sovereignty."

II. ALABAMA HAS NO STANDING TO SUE AS PARENS PATRIAE

By its complaint, Alabama also seeks to protect, as *parens patriae*, the alleged rights of its citizens in the submerged lands and their proceeds (Paragraph XXXV, pages 24-25). In support of this claim, the complaint alleges that the offshore lands and their proceeds are held by the United States subject to a trust not only for the benefit of the States but also for all the people of the United States (Paragraphs IX, X, XIII, XVI, and XXXI, pages 6-10, 21).

Alabama's contention that these lands and their proceeds are held in trust for all the people apparently rests on the statement of this Court in *United States v. California*, 332 U. S. 19, 40, that "The Government * * * holds its interests here as elsewhere in trust for all the people," and similar statements in cases concerning public lands (see Alabama's brief, pp. 31, 43, 49). As suggested under Point A, *supra*, pp. 10-11, the term "trust" is used in that context in a very broad sense, and means no more than that the properties are held in the public interest. In the *California* case, for example, the statement was made to explain that, because of the public interest, the rights of the Government should not be prejudiced by the laches of federal officers in asserting them. To say that the public has such an interest in property held by the Government is very different from saying that the property constitutes the corpus of a trust subject to the supervision and control of a court of

equity as are trusts in the strict sense. By its use of the phrase "here as elsewhere" in the *California* opinion, this Court clearly indicated that it did not consider that the offshore lands were held under any different or stricter "trust" than are all properties of the Government. The authorities cited under Point II, *infra*, pp. 22-25, 29-30, to show that the United States has complete power to dispose of this property, indicate that it does not hold them "in trust" for the citizens of the States or of the United States, in any judicially enforceable sense.

However, even if the citizens of Alabama were beneficiaries of an actual trust of all the property held by the Federal Government, the State of Alabama lacks standing to sue these defendants to protect that interest of its citizens, as *parens patriae*. There are, of course, various circumstances under which a State may act as *parens patriae* to protect the rights of its citizens. In that capacity it may, in a proper case, sue other States, as in *Pennsylvania v. West Virginia*, 262 U. S. 553, 592, or private parties, as in *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 445-452. But in the relations of citizens to the Federal Government they are represented by that Government and not by the States, and a State may not maintain a suit as *parens patriae* to protect rights asserted for its citizens in that relationship. *Massachusetts v. Mellon*, 262 U. S. 447, 485-486; *Florida v. Mellon*, 273 U. S. 12, 18. See *Georgia*

v. Pennsylvania R. Co., 324 U. S. 439, 446; *Hopkins Savings Assn. v. Cleary*, 296 U. S. 315, 341.

Alabama asserts (Brief, p. 40), that "the individual defendants in this case are not joined because they are asserting any rights on behalf of the Federal Government. They are joined only because of their proposed acquiescence and cooperation in the unlawful claims of the defendant states." But, the action which paragraph 4 of the prayer seeks to enjoin—disbursement of funds in the Treasury of the United States—would clearly be action in an official capacity, pursuant to the terms of the Submerged Lands Act; and the asserted rights of Alabama's citizens with respect to these funds, as against these defendants, concern their "relations with the Federal Government" in exactly the same sense as did the rights asserted by Massachusetts, on behalf of its citizens, in seeking to enjoin federal officials from carrying out the provisions of the federal Maternity Act of 1921. *Massachusetts v. Mellon*, 262 U. S. 447, 485-486.* In *Hopkins Savings Assn. v. Cleary*, 296 U. S. 315, 341, this Court re-

* Alabama relies heavily on *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439 (see Alabama's Brief, pp. 28-29, 38-40), but in that case the Court expressly pointed out that "This is not a suit like those in *Massachusetts v. Mellon* and *Florida v. Mellon*, *supra*, where a State sought to protect her citizens from the operation of federal statutes" (at pp. 446-447) alleged to be invalid. In its claim of a right to sue as *parens patriae*, Alabama is simply attacking a federal statute on behalf of its citizens, just as Massachusetts and Florida sought to do.

affirmed the principle that a State lacks standing to sue in such a case, distinguishing the situation where a State sought to protect constitutional rights of its citizens "against the unlawful acts of corporations created by the state itself." The Federal Government, and only the Federal Government, has standing to represent its citizens, as *parens patriae*, in asserting their federal rights against federal officials.

In the case of *Missouri v. Holland*, 252 U. S. 416, relied on by Alabama as establishing a contrary rule (Brief, p. 39), the State did not sue as *parens patriae* to protect rights of its citizens, but sued to protect its own jurisdiction and property. The Court there said, "The ground of the bill is that the statute is an unconstitutional interference with the rights reserved to the States by the Tenth Amendment, and that the acts of the defendant done and threatened under that authority invade the sovereign right of the State and contravene its will manifested in statutes. The State also alleges a pecuniary interest, as owner of the wild birds within its borders and otherwise, admitted by the Government to be sufficient, but it is enough that the bill is a reasonable and proper means to assert the alleged quasi sovereign rights of a State" (252 U. S. at 431). On its face, the case is no authority for a suit brought by a State as *parens patriae* to assert rights of its citizens.

In short, Alabama has no standing to sue either as a sovereign state to protect its right of equal

footing or as *parens patriae* to protect rights of its citizens. And since, even assuming that the Submerged Lands Act is unconstitutional or is being misapplied, Alabama is not a proper party to lay the issue before this Court, its motion for leave to file should be denied. *Florida v. Mellon*, 273 U. S. 12.

II

THE COMPLAINT FAILS TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED AGAINST THESE DEFENDANTS.

A. The essence of the complaint is that Congress exceeded its constitutional power when it granted to the individual states the natural resources of, and the submerged lands underlying, their navigable waters. In order to support this argument, it would be necessary to read some implied restriction into Article 4, § 3 of the Constitution which provides:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *

On the contrary, this Court has repeatedly recognized that the interest of the United States in its property is subject to the Government's absolute power of disposal. " * * " No one has ever contested its supreme right to dispose of its own property in its own way." *McClung v. Silliman*,

6 Wheat. 598, 605. "The right of the United States to dispose of her own property is undisputed, and to make rules by which the lands of the government may be sold or given away is acknowledged * * *." *Lamb v. Davenport*, 18 Wall. 307, 314 (emphasis added). " * * * this power is vested in congress without limitation; * * * . The disposal must be left to the discretion of congress." *United States v. Gratiot*, 14 Pet. 526, 537-538. Similarly, in *United States v. San Francisco*, 310 U. S. 16, 29, this Court said, "Article 4, § 3, Cl. 2 of the Constitution provides that 'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States.' The power over the public land thus entrusted to Congress is without limitations. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.' " For 160 years Congress has been granting federal lands and other property without any suggestion that its power to do so is fettered or limited."

* Alabama's theory that the Federal Government can be forced by the courts to retain property which it wishes to cede opens doors long locked and barred by history. Maryland could have attacked the cession of part of the District of Columbia to Virginia in 1846; another State (or perhaps an individual citizen) could sue to prevent the freeing of the Philippines, or of Puerto Rico (if that should come to pass). The hundreds of grants of federal lands and structures, of the type made by each Congress (See e. g., 67 Stat. 26, 41, 52, 53, 54, 82, 182, 203—all 83d Congress), could have

The submerged lands here involved were not "public lands" in the technical sense (cf. *Borax, Ltd., v. Los Angeles*, 236 U. S. 10, 17), but that they were subject to the same unlimited power of disposition was indicated in *United States v. California*, 332 U. S. 19, 27, where this Court said with reference to some of the very land here in dispute:

* * * Article IV, § 3, Cl. 2 of the Constitution vests in Congress "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *". We have said that the constitutional power of Congress in this respect is without limitation. *United States v. San Francisco*, 310 U. S. 16, 29-30. Thus, neither the courts nor the executive agencies could proceed contrary to an Act of Congress in this congressional area of national power.

The Court went on to hold that Congress had not acted to relinquish federal rights in this area, saying (332 U. S. at 28):

* * * both Houses of Congress passed a joint resolution quitclaiming to the adjacent states a three-mile belt of all land situated under the ocean beyond the low water mark, except those which the Government had previously acquired by purchase, condemnation, or donation. This

all been attacked. For a partial list of grants to Alabama see footnote 6 *supra*.

joint resolution was vetoed by the President. His veto was sustained. Plainly, the resolution does not represent an exercise of the constitutional power of Congress to dispose of public property under Article IV, § 3, Cl. 2.

Following, as it does, the Court's statements as to the absolute character of the congressional power to dispose of federal property, this certainly implies that that power extends to the precise sort of disposition, and the precise property, here involved, and that the power had merely failed of effective exercise at that time by reason of the presidential veto. Certainly there is not the slightest indication that the Court considered the submerged lands to be subject to any "trust" for the States or for the people which would have made such a disposition invalid.

Alabama quotes at length (Brief, pages 44-46) from the opinion of this Court in *Illinois Central Railroad v. Illinois*, 146 U. S. 387, 452-456, as indicating that lands under navigable waters are held under a trust for the public such as to invalidate a transfer of the sort here involved. For several reasons, the conclusion drawn is not sound.

In the first place, this Court has held that "the extent of the power of the State and city to part with property under navigable waters to private persons, free from subsequent regulatory control

of the water over the land and the land itself * * * is a *state question*, and we must determine it from the *law of the State* * * *." *Appleby v. City of New York*, 271 U. S. 364, 380 (emphasis added). Accord, *Illinois Central Railroad v. Chicago*, 176 U. S. 646, 659. The conclusion reached in *Illinois Central Railroad v. Illinois*, 146 U. S. 387, "was necessarily a statement of Illinois law" (*Appleby v. City of New York*, 271 U. S. 364, 395), and therefore cannot control or even influence the federal issue of Congressional power over the submerged lands. But even if the rule of the *Illinois Central* case is to be given general application, it does not invalidate the grant made by the Submerged Lands Act.

In the *Illinois Central* case the state legislature had first granted to the railroad submerged lands under Lake Michigan, and had later repealed the grant. The Court held that the repeal was effective. Describing the magnitude of the grant before it, the Court said, "Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the State can be resumed at any time" (146 U. S. at 455). "There can be no irrevocable contract in a conveyance of property by a grantor in disregard of a public trust, under which he was bound to hold and manage it" (146 U. S. at 460). The Court

concluded that phase of its discussion with the statement:

It follows from the views expressed, and it is so declared and adjudged, that the State of Illinois is the owner in fee of the submerged lands constituting the bed of Lake Michigan, which the third section of the act of April 16, 1869, purported to grant to the Illinois Central Railroad Company, and that the act of April 15, 1873, repealing the same is valid and effective for the purpose of restoring to the State the same control, dominion and ownership of said lands that it had prior to the passage of the act of April 16, 1869. [146 U. S. at 463-464.]

Plainly, the Court had before it, and therefore decided, only the question of whether the legislature had effectively revoked its former grant. The Court did not have to consider whether the former grant was wholly ineffective; and the opinion as a whole indicates that the discussion of the invalidity of the former grant was actually directed only to the invalidity of its claimed irrevocability. Since Congress has made no attempt to revoke the Submerged Lands Act, the Illinois Central decision would not be controlling or persuasive here even if it were held to announce a federal rule of law.

Moreover, in the *Illinois Central* opinion this Court recurred frequently to the fact that the grant had been to a private corporation:

A corporation created for one purpose, the construction and operation of a railroad between designated points, is, by the act, converted into a corporation to manage and practically control the harbor of Chicago, not simply for its own purpose as a railroad corporation, but for its own profit generally. [146 U. S. at 451.]

The harbor of Chicago is of immense value to the people of the State of Illinois in the facilities it affords to its vast and constantly increasing commerce; and the idea that its legislature can deprive the State of control over its bed and waters and place the same in the hands of a private corporation created for a different purpose, one limited to transportation of passengers and freight between distant points and the city, is a proposition that cannot be defended. [146 U. S. at 454.]

* * * It is hardly conceivable that the legislature can divest the State of the control and management of this harbor and vest it absolutely in a private corporation. [146 U. S. at 454-455.]

Obviously, entirely different considerations are involved in the present case, where the transfer is to States which themselves hold their property in the public interest. That distinction was recognized by this Court in *Appleby v. City of New York*, 271 U. S. 364, sustaining a grant by the

State to the city of the submerged lands surrounding the city, and a grant of part of them by the city to individuals. The Court sustained the State's grant to the city, quoting from *Cose v. State*, 144 N. Y. 396, 407, that "the extensive grant to the city of New York of the lands under water below the shore line around Manhattan island . . . was a grant to a municipality, constituting a political division of the state, for the promotion of the commercial prosperity of the city and consequently of the people of the state" (271 U. S. at 395), and distinguishing the *Illinois Central* case as a holding that "it was not conceivable that a legislature could divest the State of this [submerged area] absolutely in the interest of a private corporation" (271 U. S. at 393.)

Since the *Illinois Central* decision the Court has repeatedly recognized that States and the United States do have power to dispose of the lands under their navigable waters. Thus, in *Shively v. Bowlby*, 152 U. S. 1, 46-47, the Court referred to the *Illinois Central* case as recognizing as the settled law of this country that the States own the lands under navigable waters within their boundaries "with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in such waters," and said, "Notwithstanding the *dicta* contained in some of the opinions of this court, already quoted, to the effect that Congress has no power to grant any land

below high water mark of navigable waters in a Territory of the United States, it is evident that this is not strictly true." See also *Appleby v. City of New York*, *supra*. The validity of state law giving all land under navigable waters to the abutting riparian owners has likewise been recognized. *United States v. Willow River Co.*, 324 U. S. 499, 503; see *Donnelly v. United States*, 228 U. S. 243, 262. The grant of offshore lands to abutting States is certainly more analogous to such a disposition than it is to the railroad grant involved in the *Illinois Central* case; and with the added justification found in the governmental character of the grantees, the grant must be considered altogether outside of the condemnation of the *Illinois Central* rule.

B. The only significant relief sought against the four federal defendants is an injunction against paying out monies now held by the Federal Government (see paragraph 4 of the prayer), and it is therefore appropriate to point out that, whatever Alabama may say about the disposition of the submerged lands in the Submerged Lands Act, it surely cannot attack a Congressional disposition of the federal funds which have been collected since 1947 from the oil leases in these areas. Congress has determined to grant these accumulated monies to the adjacent states, just as it has regularly made grants to individual states or groups of states for many and varied

purposes and reasons. Against the background of the submerged lands controversy of the last decade and the weighty arguments put forth by the proponents of state control of these areas and their proceeds, it cannot be said that the legislative choice was "clearly wrong, a display of arbitrary power, not an exercise of judgment." *Helvering v. Davis*, 301 U. S. 619, 640. But unless those who oppose a federal grant of money show "that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress", they cannot begin to attack its validity. *United States v. Butler*, 297 U. S. 1, 67.

C. In addition to the assertion that the Submerged Lands Act is unconstitutional by reason of its grants to the individual states, Alabama also complains of the extent of the claim made by some of the defendant States under the Act (Paragraphs XXII, XXV, and XXVIII). The basis of this complaint is that the limit of the territorial claim of the United States, and therefore Alabama, is three miles and that therefore any State claim to a more extensive area is invalid (Alabama Brief, p. 65). But as Alabama itself points out, the Submerged Lands Act (Section 2 (b), 3 (a)) grants the states lands and resources only within their historic boundaries (Paragraph XXXVII). Therefore, under the Act itself only three miles may be considered as

granted, if Alabama is correct that that is the historic limit to the territory of the United States and therefore of the defendant States. The Act does not purport to establish a three-league boundary in the Gulf of Mexico if such a boundary is inconsistent with historic practice and understanding. It appears, therefore, that Alabama is alleging claims by the defendant States which, if Alabama is right, are not at all authorized by the Submerged Lands Act. There is, therefore, no occasion at this time to consider the validity of the "historic boundary" provisions of the Act. Moreover, this is not asserted as a claim against the individual defendants, and therefore cannot state a cause of action as against them."

Where, as here, a complaint sought to be filed fails to allege facts justifying the granting of relief, so that the complaint, if filed, would have to be dismissed, leave to file should be denied. *Alabama v. Arizona*, 291 U. S. 286. Accord: *Arizona v. California*, 292 U. S. 341. See *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 445.

"If Alabama seeks to rely on the allegation in Paragraph XXXIII that the individual defendants will acquiesce in the defendant States' claim and therefore in this allegedly unauthorized claim, the answer is that the allegation constitutes a mere prediction without the statement of any facts as a foundation and must be disregarded. The Court should not be moved to take jurisdiction by such general and unsupported allegations of "acquiescence."

III

THIS IS IN LEGAL EFFECT A SUIT AGAINST THE UNITED STATES, WHICH HAS NOT CONSENTED TO SUCH SUIT

Despite Alabama's contention (Brief, pages 72-74), this suit is not one that can be maintained against these individual defendants. The case attempted to be stated against them is, in effect, one against the United States, and as such cannot be maintained in the absence of congressional consent.

The principles involved have recently been reviewed by this Court in the case of *Larson v. Domestic & Foreign Corp.*, 337 U. S. 682. In general, a suit cannot be maintained to enjoin the official action of a public officer, since the sovereign can act only through its agents, and to enjoin official action is in effect to enjoin the sovereign. This is subject to two exceptions: where the officer is acting beyond the scope of his statutory authority, or where the statute relied on by him is unconstitutional. In such cases, his action, although purporting to be that of the sovereign, is considered not so in fact, and may ordinarily be enjoined. *Larson v. Domestic & Foreign Corp.*, 337 U. S. 682, 689-690. But, as this Court was careful to add, "Of course, a suit may fail, as one against the sovereign, even if it is claimed that the

officer being sued has acted unconstitutionally or beyond his statutory powers, if the relief requested can not be granted by merely ordering the cessation of the conduct complained of but will require affirmative action by the sovereign or the disposition of unquestionably sovereign property." *Larson v. Domestic & Foreign Corp.*, 337 U. S. 682, 691.

That statement follows earlier holdings of this Court. In *North Carolina v. Temple*, 134 U. S. 22, where a state statute forbade the audit of claims based on certain state bonds, or the levy of a tax for their payment as required by the earlier statute under which they were issued, a bondholder sued the State and the state auditor to compel levy of the tax and payment of the bonds, on the ground that the prohibitory statute was unconstitutional. This Court directed dismissal of the suit, saying (134 U. S. at 30), "We think it perfectly clear that the suit against the auditor in this case was virtually a suit against the State of North Carolina." In *Naganab v. Hitchcock*, 202 U. S. 473, an Indian, a member of a tribe which had conveyed certain lands to the United States to hold in trust for the tribe, sued the Secretary of the Interior to enjoin him from disposing of those lands in the manner provided by a later act of Congress, on the ground that such disposal would unconstitutionally deprive the plaintiff and other members of the tribe of their rights in the lands. The Court held that the action was prop-

erly dismissed for lack of jurisdiction, since the United States was the real party in interest and had not consented to be sued. The *Naganab* case is indistinguishable in principle from the one at bar, and must be considered dispositive of it. Its holding was reaffirmed in *Land v. Dollar*, 330 U. S. 731, where although suit was permitted, this Court was careful to distinguish the case before it from one "where the sovereign admittedly has title to property and is sued by those who seek to compel a conveyance or to enjoin disposition of the property, the adverse claims being based on an allegedly superior equity or on rights arising under Acts of Congress." 330 U. S. at 737-738."

The present case falls squarely within the limits of this line of authority. Alabama does not merely admit that the United States has title to the lands and moneys in question; it affirmatively asserts that the United States has such title, as an

¹¹ To the same effect, see *Louisiana v. Garfield*, 211 U. S. 70, 72-73, 77-78; *New Mexico v. Lane*, 243 U. S. 52, 58; *Minnesota v. United States*, 305 U. S. 382, 386; *Ford Co. v. Dept. of Treasury*, 323 U. S. 459, 464; *Great Northern Ins. Co. v. Read*, 322 U. S. 47, 50; *Cummings v. Deutsche Bank*, 300 U. S. 115, 118; *Leather v. White*, 266 U. S. 592, affirming 296 Fed. 477 (C. A. 7); *Lankford v. Platte Iron Works*, 235 U. S. 461; *Goldberg v. Daniels*, 231 U. S. 218; *Hopkins v. Clemson College*, 221 U. S. 636, 648-649; *Oregon v. Hitchcock*, 202 U. S. 60, 69-70; *Minnesota v. Hitchcock*, 185 U. S. 373, 386-387; *Stanley v. Schwalby*, 162 U. S. 255, 270, 272; *Bellnap v. Schild*, 161 U. S. 10; *Christian v. Atlantic & N. C. R. R. Co.*, 133 U. S. 233; *Cunningham v. Macon & Brunswick R. R. Co.*, 109 U. S. 446, 457; *Carr v. United States*, 98 U. S. 433, 437-438.

essential element of the cause of action alleged (Paragraphs IX, X, XIII and XVI). Part of the relief sought against these defendants is that they be permanently enjoined from making any payments of the moneys (Paragraph 4 of the prayer). It would be hard to imagine a clearer case of an attempt to interfere with official conduct in the management of governmental property. A suit seeking such relief is necessarily a suit against the Government. *Larson v. Domestic & Foreign Corp.*, 337 U. S. 682, 689; *Oregon v. Hitchcock*, 202 U. S. 60, 68-69; *Minnesota v. Hitchcock*, 185 U. S. 373, 384-388; and other cases cited in footnote 11, *supra*, p. 35. As this Court has said, "no injunction can be issued against officers of a State, to restrain or control the use of property already in the possession of the State, or money in its treasury when the suit is commenced", and the same rule is applicable to the United States. *Belknap v. Schild*, 161 U. S. 10, 18."

* Other relief sought against these defendants is that they be permanently enjoined from "acquiescing" in the claims of the defendant States (Paragraph 6 of the prayer). Just what such relief would amount to is hardly clear; but Webster defines "acquiesce" as "to accept or comply tacitly or passively, without implying assent or agreement." Thus, it seems that Alabama may be attempting to have these defendants forbidden to remain passive. While negative in form, this would in effect be a positive command that they be active, that is, that they affirmatively oppose the claims of the defendant States. And clearly the action sought is not mere assertion by these defendants, as individuals, of dis-

It makes no difference that the plaintiff is not seeking to secure title or possession of property for itself. A suit intended only to prevent officials from disposing of government property is still such an interference with government property as to make the suit in substance one against the Government. *Naganab v. Hitchcock*, 202 U. S. 473; *Minnesota v. Hitchcock*, 185 U. S. 373. Cf. *Seiden v. Larson*, 188 F. 2d 661 (C. A. D. C.), certiorari denied, 341 U. S. 950; *American Dredging Co. v. Cochrane*, 190 F. 2d 106 (C. A. D. C.).

The cases relied on by Alabama (Brief, pp. 73-74) are readily distinguishable. *Philadelphia Co. v. Stimson*, 223 U. S. 605, was merely a suit to prevent the defendant Secretary of War from taking action detrimental to property which admittedly belonged to the plaintiff; and *Georgia R. Co. v. Redwine*, 342 U. S. 299, was a suit to enjoin the state Revenue Commissioner from proceeding to collect an unconstitutional tax, where the remedy at law was not adequate. Neither case sought to interfere with the use or disposal of governmental property. That is the nature of this

approval of the claims of the States, but rather active opposition to those claims through official conduct. But to require affirmative, official action by a public officer is to require action by the sovereign itself, which can only act through its officers; and a suit seeking such relief is a suit against the sovereign, which cannot be maintained without its consent even where it is asserted that the defendant is infringing constitutional rights of the plaintiff. *North Carolina v. Temple*, 134 U. S. 22, 30; *Larson v. Domestic & Foreign Corp.*, 337 U. S. 682, 691.

suit; and as the Court has repeatedly recognized (see *supra*, pp. 33-37), such a suit is in effect a suit against the sovereign and cannot be maintained in the absence of the sovereign's consent, even where the plaintiff asserts invasion of his constitutional rights.

Where a petition sought to be filed in this Court states in substance, though not in form, a cause of action against the United States, which has not consented thereto, leave to file should be denied. *Louisiana v. McAdoo*, 234 U. S. 627.

IV

THE UNITED STATES IS AN INDISPENSABLE PARTY

In cases of this sort, to inquire whether the sovereign is an indispensable party is but to phrase in a different way the same question as is raised in considering whether the suit should be deemed one against the sovereign. But some of the cases have been decided on that basis and they also support our position that the motion here should be denied.

Of this group of cases, the one most closely resembling that now before the Court is *Morrison v. Work*, 266 U. S. 481. There a Chippewa Indian of Minnesota, for himself and as representative of other members of his tribe, sued the Secretary of the Interior and other federal officials (1) to en-

join their management and disposal of certain tribal property in a manner provided for by an act of Congress which was alleged to infringe constitutional rights of the Indians, (2) to enjoin management and disposal of the property in a way alleged to rest on a misconstruction of the applicable statute, and (3) to compel certain allotments to other Indians. The suit was dismissed on the ground that the United States was an indispensable party, and the Court's reasoning is controlling here. Of the first claim, the Court said:

The United States is now exercising, under the claim that the property is tribal, the powers of a guardian and of a trustee in possession. Morrison's contention is that, by virtue of the Act of 1889 and the agreements made thereunder, the ceded lands ceased to be tribal property and the rights of the Indians in the lands and in the fund to be formed became fixed as individual property. The Court of Appeals held this contention to be unfounded. We have no occasion to determine whether it erred in so ruling. The claim of the United States is, at least, a substantial one. To interfere with its management and disposition of the lands or the funds by enjoining its officials, would interfere with the performance of governmental functions and vitally affect interests of the United States. It is, therefore, an indispensable

party to this suit. It was not joined as defendant. Nor could it have been, as Congress has not consented that it be sued. [266 U. S. at 485-486.]

As to the second claim, that the defendants were misconstruing the act of Congress, this Court said:

The case at bar is unlike those in which relief by injunction has been granted against the head of an executive department, or other officer, of the Government to enjoin an official act on the ground that it was not within the authority conferred, or that it was an improper exercise of such authority, or that Congress lacked the power to confer the authority exercised. In those cases the act complained of either involved an invasion or denial of a definite right of the plaintiff, or it operated to cast a cloud upon his property. * * * Morrison and the other Chippewas have no right of that character. The lands ceded are the property of the United States. It has, confessedly, power to dispose of them. It assumed the obligation of doing this properly * * * it is the United States, not the officials, which is under obligation to account to the Indians therefor. In other words, the right of the Indians is merely to have the United States administer properly the trust assumed. It resembles the general right of every citizen to have the Government administered ac-

according to law and the public moneys properly applied. Courts have no power, under the circumstances here presented, to interfere with the performance of the functions committed to an executive department of the Government by a suit to which the United States is not, and cannot be made, a party. [266 U. S. at 486-488.]

In principle, the case at bar is in no way distinguishable from the *Morrison* case, and the holding must be the same.

A more recent case employing the rationale that the United States was an indispensable party is *Mine Safety Co. v. Forrestal*, 326 U. S. 371. The plaintiff, claiming the Renegotiation Act to be unconstitutional, sued the Under Secretary of the Navy to enjoin him from setting off sums claimed under that act against sums due to the plaintiff from the Government. This Court said, " * * though appellant denies it, the conclusion is inescapable that the suit is essentially one designed to reach money which the government owns. Under these circumstances the government is an indispensable party, *Minnesota v. United States*, 305 U. S. 382, 388, even though the Renegotiation Act under which the Secretary proposed to act might be held unconstitutional" (326 U. S. at 375).

See also *Louisiana v. Garfield*, 211 U. S. 70, where a bill against the Secretary of the Interior,

seeking to establish the title of the State to lands under the Swamp Land Act of 1849, was dismissed because it raised substantial questions of law and fact on which the United States would have to be heard; *Belknap v. Schild*, 161 U. S. 10, where a bill against certain federal officials to enjoin their use of a caisson gate, claimed to infringe a patent held by the plaintiff, was dismissed because the gate was owned and used by the United States, which was therefore the only real party in interest and an indispensable party to enable the court to grant the relief sought; cf. *United States v. Alabama*, 313 U. S. 274, holding the United States an indispensable party to proceedings for the tax sale of lands in which it has an interest.

It is of course clear that "A bill of complaint will not be entertained which, if filed, could only be dismissed because of the absence of the United States as a party." *Arizona v. California*, 298 U. S. 558, 572.

CONCLUSION

It is submitted that Alabama has no standing to sue; that the complaint fails to state a claim on which relief could be granted against these defendants; that the suit is against the United States, which has not consented to be sued; that the United States is an indispensable party and is not, and cannot be, joined. For each and all of

these reasons leave to file the complaint should be denied.

Respectfully submitted.

HERBERT BROWNELL, Jr.,
Attorney General.

ROBERT L. STERN,
Acting Solicitor General.

J. LEE RANKIN,
Assistant Attorney General.

OSCAR H. DAVIS,

JOHN F. DAVIS,

Special Assistants to the Attorney General.

GEORGE S. SWARTH,
Attorney.

DECEMBER 1953.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original

STATE OF ALABAMA, Complainant,

v.

**STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.**

PETITION FOR REHEARING

SI GARRETT

Attorney General of Alabama

GORDON MADISON

**Assistant Attorney General of
Alabama**

MARY LEVA

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**FOWLER, LEVA, HAWES & SYMINGTON
Of Counsel**

IN THE
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v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

PETITION FOR REHEARING

The State of Alabama applies to this Court for a rehearing and reconsideration of its decision of March 15, 1954, in this cause.

The State of Rhode Island has filed a lengthy and detailed application for rehearing and supporting brief in its case against the same defendants.

Since the issues in the case brought by the State of Rhode Island and the case brought by the State of Alabama against these defendants are similar, and since the cases were consolidated by this Court for argument and decision, the State of Alabama hereby adopts the argument

set forth in the petition of the State of Rhode Island in
Rhode Island v. Louisiana, et al.

Respectfully submitted,

SI GARRETT

Attorney General of Alabama

GORDON MADISON

*Assistant Attorney General of
 Alabama*

MARX LEVA

Attorney for Complainant

FOWLER, LEVA, HAWES & SYMINGTON
Of Counsel

Certificate of Counsel

We hereby certify that this petition for rehearing is presented in good faith and not for delay.

We further certify that a copy of this petition, for rehearing has been served on all the parties of record by mailing a copy of same to them, postage prepaid.

SI GARRETT

Attorney General of Alabama

GORDON MADISON

*Assistant Attorney General of
 Alabama*

MARX LEVA

Attorney for Complainant

APR 8 1954

HAROLD B. WILLEY, Clerk

IN THE
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MCKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

ANSWER OF THE STATE OF LOUISIANA TO
COMPLAINANT'S PETITION FOR REHEARING

FRED S. LEBLANC,
Attorney General,
State of Louisiana

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana

BAILEY WALSH,
Special Assistant
Attorney General,
State of Louisiana

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original

STATE OF ALABAMA, *Complainant*,

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STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,

**ANSWER OF THE STATE OF LOUISIANA TO
COMPLAINANT'S PETITION FOR REHEARING**

Now comes the State of Louisiana, through its Attorney General, appearing herein for the sole and only purpose of answering complainant's petition for rehearing and, so responding, respectfully states:

The State of Alabama has filed a petition for rehearing herein on its motion for leave to file complaint against the above named defendants, and in that petition it has adopted in full the points raised and argument made in the petition for rehearing for the same purpose which the State of Rhode Island has filed.

The State of Louisiana, seeking to obviate repetition, makes all of the points raised and argument made in its

answer to the State of Rhode Island's petition, equally and to the same extent applicable in now answering the State of Alabama's petition, as if the same had been written herein in extenso.

Conclusion

For the reasons set forth in the foregoing answer, Louisiana respectfully urges that Alabama's petition for rehearing be denied.

Respectfully submitted,

FRED S. LEBLANC,
Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana.

BAILEY WALSH,
Special Assistant
Attorney General,
State of Louisiana.

Attorneys for Defendant,
State of Louisiana.

April 5, 1954.

Certificate of Service

I hereby certify that I have served the foregoing document, together with Louisiana's answer to Rhode Island's petition for rehearing aforementioned, by mailing copies thereof, postage prepaid, to him or her at the address listed below.

Hon. Si Garrett
Attorney General of
Alabama
State Capitol
Montgomery, Alabama

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. Edmund G. Brown
Attorney General of
California
State Building
San Francisco, California

Hon. Richard W. Ervin
Attorney General of
Florida
State Capitol
Tallahassee, Florida

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the United
States
Department of the Treasury
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Hon. Herbert Brownell, Jr.
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Assistant Attorney General
State of Louisiana

City of Washington, District of Columbia—ss.

Subscribed and sworn to before me this 5th day of April,
1954.

BYRD C. REIB

*Notary Public in and for
Said City and District*

[SEAL]

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No. Original.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT

and
COMPLAINT

WILLIAM E. POWERS,
*Attorney General of Rhode Island,
Attorney for Complainant.*

December 21, 1953.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Rhode Island and Providence Plantations, by its Attorney General, asks leave of the Court to file the Complaint submitted herewith against the State of Louisiana, the State of Florida, the State of Texas, the State of California, George M. Humphrey, Douglas McKay, Robert B. Anderson, and Ivy Baker Priest.

WILLIAM E. POWERS,
Attorney General of Rhode Island.

December 21, 1953.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original

STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

COMPLAINT

The State of Rhode Island and Providence Plantations, (hereinafter called Rhode Island) by its Attorney General, brings this action against the defendants, the State of Louisiana, the State of Florida, the State of Texas, the State of California, and the following named individuals: George M. Humphrey; Douglas McKay, Robert B. Anderson and Ivy Baker Priest, acting under color of authority as Secretary of the Treasury, Secretary of the Interior, Secretary of the Navy and Treasurer of the United States, respectively; and for its cause of action states:

I.

The jurisdiction of This Court is invoked under Article III, Section 2 of the Constitution of the United States, and Title 28, United States Code, Section 1251.

II.

Rhode Island, the complainant herein, is an original state of the Union.

III.

The State of Louisiana, a defendant herein, is a state of the Union, admitted into the Union in 1812 by the terms of the Act of Congress of April 8, 1812, c. 50, (2 Stat. 701), which declared the State of Louisiana to be one of the United States of America and admitted into the Union on an equal footing with the original states in all respects whatever. Louisiana was the fifth state admitted to the Union after the assent to the Constitution and the ratification thereof by Rhode Island on May 29, 1790. Rhode Island was the thirteenth and last of the original states to become a member of the Union.

IV.

The State of Florida, a defendant herein, is a state of the Union admitted into the Union in 1845 by the terms of the Act of Congress of March 3, 1845, c. 48, (5 Stat. 742), which declared the State of Florida to be one of the United States and admitted to the Union on an equal footing with the original states in all respects whatever. Florida was the fourteenth state admitted to the Union after the assent to the Constitution and the ratification thereof by Rhode Island.

V.

The State of Texas, a defendant herein, is a state of the Union, admitted into the Union in 1845 by the terms of the

Joint Resolution of Congress of March 1, 1845, No. 8, (5 Stat. 797), which declared the State of Texas to be admitted to the United States on an equal footing with the original states. Texas was the fifteenth state admitted to the Union after the assent to the Constitution and the ratification thereof by Rhode Island.

VI.

The State of California, a defendant herein, is a state of the Union, admitted into the Union in 1850 by the terms of the Act of Congress of September 9, 1850, c. 50, (9 Stat. 452), which declared the State of California to be one of the United States of America and admitted into the Union on an equal footing with the original states in all respects whatever. California was the eighteenth state admitted to the Union after the assent to the Constitution and the ratification thereof by Rhode Island.

VII.

When the defendant states Louisiana, Florida, Texas, and California, came into the Union in the manner and at the times described in Paragraphs III through VI of this complaint, each became a sister state of Rhode Island on an equal footing in all respects whatever with Rhode Island and with each other and with all the other states in the Union.

VIII.

Defendant George M. Humphrey is Secretary of the Treasury, and a citizen of the State of Ohio; defendant Douglas McKay is Secretary of the Interior, and a citizen of the State of Oregon; defendant Robert B. Anderson is Secretary of the Navy, and a citizen of the State of Texas; defendant Ivy Baker Priest is Treasurer of the United States, and a citizen of the State of Utah.

IX.

Insofar as the States of the United States and the citizens and people thereof are concerned, the United States is now and has been at all pertinent times heretofore possessed of paramount rights in, full dominion and power over, and exclusive jurisdiction and control over the lands, minerals and other natural resources of the subsoil and seabed underlying the Gulf of Mexico seaward from the ordinary low water mark along that portion of the coast of Louisiana which is in direct contact with the open sea and from the seaward limit of inland waters extending to the territorial limits of the United States in the Gulf of Mexico. The United States acquired these rights as attributes of national sovereignty in the manner described by this Court in *United States v. California*, 332 U. S. 19; *United States v. Louisiana*, 339 U. S. 699; and *United States v. Texas*, 339 U. S. 707 and holds and has held these rights and revenues derived therefrom as trustee for all the states and citizens of the United States, including Rhode Island and its citizens and people.

X.

Rhode Island, its people and citizens, by virtue of its membership in the Union on a footing by which that of the State of Louisiana is measured, as set forth in paragraph VII of this Complaint, is entitled to equal treatment with the State of Louisiana with respect to the limit of territorial waters measured seaward from the ordinary low water mark and from the seaward limit of inland waters. Both by rule of international law and by determinations of the United States Government in the conduct of its foreign relations, the permissible width of the belt of territorial waters is three nautical miles. This rule is binding equally upon Rhode Island and upon the State of Louisiana. The area beyond the three mile belt of territorial waters of the State of Louisiana (and in particular the area from three to nine nautical miles from the ordinary low water

mark or seaward limit of inland waters) is, therefore part of the high seas and outside the territorial boundaries of Louisiana.

XI.

Insofar as the States of the United States and the citizens and people thereof are concerned, the United States is now and has been at all pertinent times prior hereto, possessed of paramount rights in, full dominion and power over, and exclusive right to jurisdiction and control over the lands, minerals and other natural resources of the subsoil and seabed underlying the Gulf of Mexico lying seaward from the ordinary low water mark along that portion of the coast of Florida which is in direct contact with the open sea and from the seaward limit of inland waters, extending to the territorial limits of the United States. The United States acquired these rights as attributes of national sovereignty in the manner described by this Court in *United States v. California*, 332 U. S. 19; *United States v. Louisiana*, 339 U. S. 699 and *United States v. Texas*, 339 U. S. 707, and holds and has held these rights and the revenues therefrom as trustee for all the citizens and all the people and all the states, including Rhode Island and its citizens and people.

XII.

Rhode Island, its people and citizens, by virtue of its membership in the Union on a footing by which that of the State of Florida is measured as set forth in paragraph VII of this complaint, is entitled to equal treatment with the State of Florida with respect to the limit of territorial waters and the land and its contents under such waters measured from the ordinary low water mark from the seaward limit of inland waters. Both international law and determinations of the United States Government in the conduct of its foreign relations refer to the permissible width of the belt of territorial waters as three nautical miles.

This rule is binding equally upon Rhode Island and upon the State of Florida. The area beyond the three mile belt of territorial waters of the State of Florida (and in particular the area from three to nine nautical miles from the ordinary low water mark or seaward limit of inland waters) is, therefore part of the high seas and outside the territorial boundaries of Florida.

XIII.

Insofar as the States of the United States and the citizens and people thereof are concerned, the United States is now and has been at all pertinent times prior hereto possessed of paramount rights in, full dominion and power over, and the exclusive jurisdiction and control over the lands, minerals and other natural resources of the subsoil and seabed underlying the Gulf of Mexico seaward from the ordinary low water mark along that portion of the coast of Texas which is in direct contact with the open sea and from the seaward limit of inland waters extending into the Gulf of Mexico to the territorial boundaries of the United States. The United States acquired these rights as attributes of national sovereignty in the manner described by the Court in *United States v. California*, 332 U. S. 19; *United States v. Louisiana*, 339 U. S. 699; *United States v. Texas*, 339 U. S. 707 and holds and has held these rights and revenues derived therefrom as trustee for all the people and all the states, including Rhode Island, and its citizens and people.

XIV.

Rhode Island, its people and citizens, by virtue of its membership in the Union on a footing by which that of the State of Texas is measured as set forth in paragraph VII of this complaint, is entitled to equal treatment with the State of Texas with respect to the limit of territorial waters and the land and its contents under such waters measured

from the ordinary low water mark from the seaward limit of inland waters. Both international law and determinations of the United States Government in the conduct of its foreign relations refer to the permissible width of the belt of territorial waters as three nautical miles. This rule is binding equally upon Rhode Island and upon the State of Texas. The area beyond the three mile belt of territorial waters of the State of Texas (and in particular the area from three to nine nautical miles from the ordinary low water mark or seaward limit of inland waters) is, therefore part of the high seas and outside the territorial boundaries of Texas.

XV.

The United States is now and has been at all pertinent times prior hereto, possessed of paramount rights in, full dominion in and power over, and the exclusive jurisdiction and control over, the lands, minerals and other natural resources of the subsoil and seabed underlying the Pacific Ocean seaward of the ordinary low water mark on the coast of California and outside of inland waters, extending seaward to the limit of the territorial boundaries of the United States. The United States acquired these rights as attributes of national sovereignty at the times and in the manner described by this Court in *United States v. California*, 332 U. S. 19; *United States v. Louisiana*, 339 U. S. 699, and *United States v. Texas*, 339 U. S. 707, and holds and has held these rights and revenues derived therefrom for all the people and for all the states, including Rhode Island and its citizens and people.

XVI.

The value of the natural resources of the subsoil and seabed off the coast of the defendants Louisiana, Florida, Texas, and California referred to in paragraphs IX, XI,

XIII and XV is conservatively estimated to be in excess of fifty billion dollars.

XVII.

Citizens of Rhode Island, together with other citizens of the United States, are now, and have been at all pertinent times prior hereto, possessed of the privilege to take fish off the coast of Canada and Newfoundland, beyond the territorial limits of Canada and Newfoundland. By treaties of October 20, 1818 and January 23, 1924, between Great Britain (including its dominions overseas) and the United States, these limits are fixed at three miles from the coast-line. The exercise of this privilege is an essential mainstay to the fishing industry of Rhode Island, on which thousands of citizens of Rhode Island are wholly or partially dependent for their livelihood, and plays an important role in the economy of Rhode Island. Citizens of Rhode Island earn and have earned many millions of dollars a year from the exercise of this privilege.

XVIII.

The State of Louisiana has asserted, and continues to assert, that its territorial boundaries include the high seas off the coast of Louisiana extending seaward into the Gulf of Mexico twenty-seven nautical miles from the ordinary low water mark along that portion of the coast of Louisiana which is in direct contact with the open sea and from the seaward limit of its inland waters. In consequence, the claims of Louisiana (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) described in the next following paragraph relate not only to the mineral resources described in those paragraphs which are found within three nautical miles seaward into the Gulf of Mexico from the ordinary low water mark and from the seaward limit of inland waters, but also the natural resources found on the high seas in the area between three to nine miles seaward into the Gulf of Mexico.

XIX.

The State of Louisiana has asserted and is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) continuing to assert ownership of, full dominion and power over, and the exclusive jurisdiction and control over the land, minerals and other resources of the subsoil and seabed described in paragraph IX of this Complaint, contrary to the decision and judgment of this Court in *United States v. Louisiana*, 339 U. S. 699, and the decision of this Court in *United States v. California*, 322 U. S. 19, and over the fish, shrimp, crabs, lobsters and other marine animal and plant life of the same area. As part of these assertions the State of Louisiana has made enactments and negotiations with respects to such natural resources and has negotiated and executed, and continues to negotiate and execute, numerous leases and licenses with various persons and corporations authorizing them to enter upon the area described in paragraph IX and take petroleum, gas, mineral deposits and other natural resources of the subsoil. The State of Louisiana has received and is receiving large sums of money from these leases and licenses, which sums of money have been applied and are being applied for the exclusive benefit of the State of Louisiana and the citizens thereof, thereby unlawfully attempting to deprive the complainant and its citizens and people of their equitable interests in the rights and revenues described in paragraph IX and held by the United States for the benefit of all the states and all the citizens and people of the United States, including the complainant, and its citizens. The State of Louisiana will continue to engage in the course of conduct described in this paragraph unless prevented from doing so by this Court.

XX.

The State of Florida has asserted, and is continuing to assert, that its territorial boundaries include the high seas off the coast of Florida extending seaward into the Gulf of

Mexico nine nautical miles from the ordinary low water mark along that portion of the coast of Florida which is in direct contact with the open sea and from the seaward limit of inland waters. In consequence, the claims of Florida (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) described in the following paragraph XXI relate not only to the natural resources described in those paragraphs which are found within three nautical miles seaward into the Gulf of Mexico from the ordinary low water mark and from the seaward limit of inland waters, but also the natural resources found on the high seas in the area between three to nine miles seaward into the Gulf of Mexico.

XXI.

The State of Florida has asserted, and is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) continuing to assert ownership of, full dominion and power over, and the exclusive right to jurisdiction and control over the land, minerals and other natural resources of subsoil and seabed described in paragraph XI of this Complaint, contrary to the decisions of this Court in *United States v. California*, 332 U. S. 19; *United States v. Texas*, 339 U. S. 707; and *United States v. Louisiana*, 339 U. S. 699, and over fish, shrimp, crabs, lobsters and other marine animal and plant life in the same area. As part of these assertions the State of Florida has made enactments and regulations with respect to such natural resources, has claimed the right to negotiate and execute, and now claims the right to negotiate and execute leases and licenses with various persons and corporations authorizing them to enter upon the area described in paragraph XI and take petroleum, gas, mineral deposits and other natural resources of the subsoil. The State of Florida plans and proposes to apply the sums of money received from such leases and licenses for the exclusive benefit of the State of Florida and the citizens thereof, thereby unlawfully de-

priving the complainant and its citizens of their equitable interest in the rights and revenues described in paragraph XI and held by the United States for the benefit of all the states and citizens of the United States, including the complainant and its citizens. The State of Florida will continue to engage in the course of conduct described in this paragraph unless prevented from doing so by this Court.

XXII.

The State of Texas has asserted, and is continuing to assert, that its territorial boundaries include the high seas off the coast of Texas extending into the Gulf of Mexico to the edge of the continental shelf, an area which extends into the Gulf of Mexico more than fifty and as much as one-hundred and fifty nautical miles seaward from the ordinary low water mark along that portion of the coast of Texas which is in direct contact with the open sea and from the seaward limit of inland waters. In consequence, the claims of Texas (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) described in the next following paragraph relate not only to the natural resources described in those paragraphs which are found within three nautical miles seaward into the Gulf of Mexico from the ordinary low water mark and from the seaward limit of inland waters, but also the natural resources found on the high seas in the area between three to nine miles seaward into the Gulf of Mexico, and to the limit of the continental shelf.

XXIII.

The State of Texas has asserted and is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) continuing to assert ownership of, full dominion and power over, and the exclusive jurisdiction and control over the land, minerals and other resources of the subsoil and seabed described in paragraph XIII of this Complaint, con-

trary to the decision of this Court in *United States v. Texas*, 339 U. S. 707, and the decision of this Court in *United States v. California*, 332 U. S. 19, and over the fish, shrimp, crabs, lobsters and other marine animal and plant life in the same area. As part of these assertions the State of Texas has made enactments and regulations with respect to such natural resources and has negotiated and executed, and continues to negotiate and execute, numerous leases and licenses with various persons and corporations authorizing them to enter, remain upon, use and occupy the area described in paragraph XIII and take petroleum, gas, mineral deposits and other natural resources of the subsoil. The State of Texas has received and is receiving large sums of money from these leases and licenses, which sums of money have been applied, and are being applied, for the exclusive benefit of the State of Texas and its citizens, thereby unlawfully attempting to deprive the complainant and its citizens of their equitable interests in the rights and revenues described in paragraph XIII and held by the United States for the benefit of all the states and all the people and citizens of the United States, including the complainant and its people and citizens. The State of Texas will continue to engage in the course of conduct described in this paragraph unless prevented from doing so by this Court.

XXIV.

The State of California has asserted and is now (under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65) continuing to assert ownership of, full dominion and power over and the exclusive jurisdiction and control over the lands, minerals and other natural resources of the subsoil and seabed described in paragraph XV of this Complaint, contrary to the decision and judgment of this Court in *United States v. California*, 332 U. S. 19, and over the fish, shrimp, crabs, lobsters and other marine animal and plant life in the same area. As part of these assertions,

the State of California has made enactments and regulations with respect to such natural resources and has negotiated and executed, and continues to negotiate and execute, numerous leases and licenses with various persons and corporations authorizing them to enter, remain upon, use and occupy the area described in paragraph XV and take petroleum, gas, mineral deposits and other natural resources of the subsoil. The State of California has received and is receiving large sums of money from these leases and licenses, which sums of money have been applied and are being applied to the exclusive benefit of the State of California and its citizens, thereby unlawfully attempting to deprive the complainant and its citizens and people of their equitable interest in the rights and revenues described in paragraph XV and held by the United States for the benefit of all the states and people and citizens of the United States, including the complainant and its citizens and people. The State of California will continue to engage in the course of conduct described in this paragraph unless prevented from doing so by this Court.

XXV.

As a result of the paramount rights, full dominion and power, and exclusive jurisdiction and control of the United States over the lands, minerals and other natural resources described in paragraphs IX, XIII and XV of this Complaint and as a result of the decisions and orders of this Court in *United States v. California*, 332 U. S. 19; *United States v. Louisiana*, 339 U. S. 699; and *United States v. Texas*, 339 U. S. 707 and actions taken pursuant to these decisions and orders, the defendant California holds impounded for the benefit of the United States, and the defendants Humphrey, McKay, Anderson and Priest hold, or have under their direction and control, monies heretofore paid as rents, royalties, or otherwise in connection with leases and licenses with various persons and corporations under which such persons and corporations have entered

upon the areas described in paragraphs IX, XIII and XV and have taken the natural resources described in those paragraphs. The sum of money involved is in excess of \$62,000,000. The defendants California, Humphrey, McKay, Anderson and Priest hold such monies, and are required by law to exercise the direction and control which they have over such monies, as trustees for all the states and citizens of the United States, including the complainant and its citizens, and not for the special and exclusive benefit of defendant States of California, Louisiana and Texas, to the exclusion of the complainant and its citizens, as well as to the exclusion of the other states of the United States and the citizens thereof.

XXVI.

As a result of the assertions of territorial jurisdiction by the defendant States of Louisiana, Florida and Texas described in paragraphs XVIII, XX and XXII of this Complaint, and assertions of ownership of, full dominion and power over and exclusive jurisdiction and control over the resources described in paragraphs XIX, XXI and XXIII, the fishing privileges enjoyed by the citizens of Rhode Island described in paragraph XVII are placed in jeopardy. The effect of the assertions of said defendant states (under color of authority of Public Law 31) operate as a repudiation of the United States treaty obligation to limit its claims of territorial waters to a belt three miles in width from its coasts. This will release the Dominion of Canada from its treaty obligation to limit its claims of territorial waters to a belt three miles in width from its coast. Thus, citizens of Rhode Island, together with other citizens of the United States, will be denied access to fisheries presently enjoyed off the coast of Canada, which will greatly diminish the revenues to be derived from the exercise of the privilege described in paragraph XVII, to the irreparable detriment of Rhode Island and its citizens.

XXVII.

The defendants Humphrey, McKay, Anderson and Priest, acting under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65, will, if not restrained by this Court, pay the monies referred to in paragraph XXV of this Complaint to the defendants California, Texas and Louisiana, or exercise their direction and control over such monies for the exclusive benefit of the defendant's California, Louisiana and Texas, thereby unlawfully depriving the complainant, and its citizens, of their proportionate and equitable interest in these monies.

XXVIII.

The defendants Humphrey, McKay, Anderson and Priest, acting under color of authority of Public Law 31, 83d Cong., 1st Sess., c. 65, will, if not restrained by this Court, acquiesce in the assertions of the defendants California, Texas, Louisiana and Florida set forth in paragraphs XVIII to XXIV inclusive, of this Complaint, and will fail to assert the interest of the United States set forth in paragraphs IX, XI, XIII and XV of this Complaint, thereby depriving the complainants and its citizens of their proportionate equitable interest in the natural resources described in paragraphs IX, XI, XIII and XV of this Complaint and the revenues derived therefrom.

XXIX.

Rhode Island sues, *inter alia*, in its sovereign capacity as an original state of the Union, enjoying equal footing with the defendant states and other states of the Union in all respects whatsoever, to protect sovereign rights equal to and co-extensive with those of the defendant states, which rights have been or will be derogated by assertions made or proposed to be made by the defendant states under color of authority of Public Law 31.

XXX.

The officials of the Executive Branch of the Government having failed in their duty to support and uphold the Constitution and the rights of the United States with respect to the subject matter of this suit, Rhode Island sues in its sovereign capacity as one of the forty-eight states in order to assure compliance, by the Federal Government, with the express prohibitions contained in the Constitution itself, and in order also to prevent action such as here contemplated by the defendants, which action, if permitted to be carried out, would place the individual defendants in a position whereby they would be violating their official duties to support the Constitution.

XXXI.

Rhode Island sues in its capacity as quasi-sovereign and *parens patriae* for the citizens of Rhode Island for whom the paramount rights of the Federal Government with respect to the resources described in paragraphs IX, XI, XIII and XV of this Complaint and revenues therefrom are held in trust.

XXXII.

Rhode Island sues in its capacity as quasi-sovereign and *parens patriae* for its citizens whose economy and livelihood will be irreparably injured by action taken or proposed to be taken by the defendant states described in paragraph XXVI of this Complaint.

XXXIII.

The terms of Public Law 31, 83d Cong., 1st Sess., c. 65 do not authorize the claims of the defendant States Texas, Louisiana and Florida to a belt of territorial waters nine nautical miles in width described in paragraphs XVII, XX and XXII of this Complaint. The boundaries which these defendant states now claim, as described in

those paragraphs, did not exist at the times each such defendant state became a member of the Union, or if they did exist as a claim merely or in actual territory *de jure*, the entrance of each of these states into the Union operated to transfer and relinquish to the United States any claim, whether existing in mere assertion or as of right. Furthermore, these claims of the defendant states have not been approved by the Congress of the United States at any time subsequent to their admission to the Union and prior to the passage of Public Law 31, 83d Cong., 1st Sess., c. 65. Furthermore, Public Law 31, 83d Cong., 1st Sess., c. 65, should not be construed so as to authorize the other claims, assertions and actions of any of the defendant states described in this Complaint.

XXXIV.

If construed so as to authorize the claims, assertions and actions set forth and described in this complaint, Public Law 31, 83d Cong., 1st Sess., c. 65, is unconstitutional, null and void for the following reasons:

1. Public Law 31, 83d Cong., 1st Sess., c. 65, involves an unlawful abdication by the Government of the United States and an unlawful delegation to the defendant states of certain essential and non-delegable elements of national sovereignty which this Court in *United States v. California*, 332 U. S. 19; *United States v. Louisiana*, 339 U. S. 699; *United States v. Texas*, 339 U. S. 707, held adhere under the Constitution to the Government of the United States and the Government of the United States alone. Public Law 31, 83d Cong., 1st Sess., c. 65, therefore does not constitute an ordinary disposition of property belonging to the United States within the meaning of Article IV, Section 3, clause 2 of the Constitution.

2. Public Law 31, 83d Cong., 1st Sess., c. 65, purports to transfer to the defendants the States of Louisiana, Florida, Texas and California rights over resources to which the

United States has paramount rights and dominion as an essential attribute of national sovereignty and which the United States is required by the Constitution to hold in trust for the people of the whole nation.

3. Public Law 31, 83d Cong., 1st Sess., c. 65, attempts an unconstitutional delegation to certain states of the power of Congress under Article IV, Section 3, clause 2 of the Constitution to dispose of and make all needful rules and regulations respecting property belonging to the United States, and attempts an unconstitutional abdication of the constitutional role of the United States to exercise the power granted under Article IV, Section 3, clause 2 of the Constitution for the benefit of all the people of the United States.

4. Rhode Island had before the enactment of said Public Law 31 and notwithstanding the provisions of that law, still has an interest in the lands and resources covered by Public Law 31, 83d Cong., 1st Sess., c. 65, identical with that of the defendants the State of Louisiana, the State of Florida, the State of Texas, and the State of California. Public Law 31, 83d Cong., 1st Sess., c. 65 which purports to convey and alienate irrevocably these natural resources to these four states alone is, therefore, contrary to the terms on which Rhode Island, Louisiana, Florida, Texas and California were admitted to the Union pursuant to Article IV, Section 3, clause 1 of the Constitution and is therefore contrary to this Article and is contrary to the constitutional bond both required by and formed under authority of this Article.

5. Public Law 31, 83d Cong., 1st Sess., c. 65, is contrary to Article IV, Section 3, Clause 1 of the Constitution and action taken thereunder which guarantees that all states admitted to the Union shall be and remain equal in power, dignity and authority. If interpreted in a manner consistent with the claims and actions of the defendant States of Louisiana, Florida and Texas and the claims and actions of the defendant Humphrey, McKay, Anderson and

Priest, Public Law 31, 83d Cong., 1st Sess., c. 65, purports to give to these three states, alone of all the states in the Union, the right to extend their boundaries three marine leagues from their shores.

6. Public Law 31, 83d Cong., 1st Sess., c. 65, attempts an unconstitutional abdication or delegation by Congress of its power to control, in a sovereign and national capacity, the natural resources described in this Complaint for the purpose of providing for the common defense of the United States under Article I, Section 8 of the Constitution.

WHEREFORE, your complainant prays that:

1. Public Law 31, 83d Cong., 1st Sess., c. 65, be decreed to be unconstitutional, void and of no effect.

2. Public Law 31, 83d Cong., 1st Sess., c. 65, be declared to give to the defendant states no rights to, or power, authority, or dominion over, any lands, natural resources or marine animal or plant life which was, prior to the enactment of such law, vested by the Constitution in the United States to be exercised for the benefit of all the states and citizens of the United States, and that to the extent that such law is construed to give any such right, power, authority or dominion to the defendant states it be declared to be unconstitutional, void and of no effect.

3. Public Law 31, 83d Cong., 1st Sess., c. 65, be declared to give the defendant States, Louisiana, Florida and Texas no right to, or power, authority or dominion over the maritime belt lying seaward between three and nine nautical miles from the ordinary low water mark along that portion of their coasts which is in direct contact with the open sea and from the seaward limit of inland waters and that to the extent that such law is construed to give any such right, power, authority or dominion to these defendant states it be declared to be unconstitutional, void and of no effect.

4. The defendants Humphrey, McKay, Anderson and Priest and each of them be permanently enjoined from making any payments of funds referred to in paragraph XXV now under their control, and the defendants the State of Louisiana, the State of Florida, the State of Texas and the State of California be enjoined and ordered to make restitution of any payments which may already have been made.

5. The defendants the State of Louisiana, the State of Florida, the State of Texas and the State of California be permanently enjoined and restrained from attempting to assert ownership of, full dominion and power over and the exclusive jurisdiction and control over the land, minerals and other natural resources of the subsoil and seabed described in paragraphs IX, XI, ~~XIV~~ and XV of this Complaint and marine animal and plant life in the manner described in paragraph ~~XIX~~, XXI, XXIII and ~~XXIV~~ of this Complaint. X

6. The defendants Humphrey, McKay, Anderson and Priest be permanently enjoined and restrained from acquiescing in the assertions of the defendants the States of Louisiana, Florida, Texas and California described in paragraphs XVIII through ~~XXIV~~ of this Complaint in the manner described in paragraph XXVIII of this Complaint.

7. The defendants the States of Louisiana, Florida and Texas be permanently enjoined and restrained from attempting to assert jurisdiction on the high seas as described in paragraphs XVIII, XX and XXII of this Complaint and that the action taken by these defendant states in such assertions of jurisdiction be decreed to be unconstitutional, void and of no effect.

8. The State of Rhode Island recover its costs herein expended and be granted such other relief as this Court may deem just and equitable.

Respectfully submitted,

WILLIAM E. POWERS,
*Attorney General of Rhode Island,
Attorney for Complainant.*

December 21, 1953.

Certificate of Service.

I, WILLIAM E. POWERS, certify that I have served a copy of the foregoing motion for leave to file complaint, and the attached complaint, and the brief in support thereof, on the following named individuals by mailing a copy of same to them, postage prepaid, to the following addresses:

The Honorable Allen Shivers
Governor
State Capitol
Austin, Texas

The Honorable John Ben
Shepperd
Attorney General
State Capitol
Austin, Texas

The Honorable Robert F.
Kennon
Governor
State Capitol
Baton Rouge, Louisiana

The Honorable Fred S. LeBlanc
Attorney General
State Capitol
Baton Rouge, Louisiana

The Honorable Charley E. Johns
Governor
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Tallahassee, Florida

The Honorable Richard W.
Ervin
Attorney General
State Capitol
Tallahassee, Florida

The Honorable Goodwin Knight
Governor
State Capitol
Sacramento, California

The Honorable Edmund G.
Brown
Attorney General
State Capitol
Sacramento, California

The Honorable George M.
Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

The Honorable Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

The Honorable Robert B.
Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

The Honorable Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

The Honorable Herbert
Brownell, Jr.
Attorney General
Department of Justice
Washington, D. C.

Done on this the 21st day of December, 1953.

WILLIAM E. POWERS,
*Attorney General of Rhode Island,
Attorney for Complainant.*

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Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

**STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIST,**
Defendants.

BRIEF FOR COMPLAINANT.

WILLIAM E. POWERS,
Attorney General of Rhode Island,
THOMAS G. CONNORAN,
Attorneys for Complainant.

CONNORAN, YOUNGMAN & ROWE,
Of Counsel.

December 21, 1953.

INDEX

	Page
Jurisdiction	1
Questions presented	2
Statutes and constitutional provisions involved	3
Statement	4
Summary of Argument	8
Argument	11
I. Rhode Island has standing to sue	11
II. Public Law 31 is invalid since Congress has no power whatever to dispose of the Federal Government's "paramount rights" with respect to these resources, since the "paramount rights" of the Federal Government do not constitute "property" within the meaning of Article IV, Section 3, Clause 2 of the Constitution, but constitute instead one attribute of a non-delegable responsibility of national sovereignty—namely, the responsibility of the Federal Government to provide for the common defense and to conduct foreign relations	20
III. Aside from the basic inapplicability of the "property clause" of the Constitution, Public Law 31 is an unconstitutional exercise of the power of Congress to dispose of public lands ..	28
IV. Public Law 31 is unconstitutional in its denial to Rhode Island of its right to be treated on an equal footing with the defendant states	32
V. The suit of Rhode Island is not a suit against the United States	37
Conclusion	37
<hr/>	
Appendix A.	
Public Law 31, 83d Cong., 1st Sess., c. 65	38
Relevant portions of the Acts of Congress admitting the States of Alabama, Louisiana, Florida, Texas and California to the Union	45

Legislative acts setting forth boundary claims of Texas and Louisiana and constitutional provisions setting forth boundary claim of Florida	46
Appendix B. The History of Article IV, Section 3, Clause 2 at the Constitutional Convention of 1787	50
Appendix C. The History of Article IV, Section 3, Clause 2, and Related Matters, at the Virginia Convention of 1788	53

CITATIONS

CASES:

<i>Alabama v. Georgia</i> , 23 How. 505 (1859)	13
<i>Ashwander v. Tennessee Valley Authority</i> , 297 U. S. 288 (1936)	30
<i>Campfield v. United States</i> , 167 U. S. 518 (1897)	31
<i>Causey v. United States</i> , 240 U. S. 399 (1916)	31
<i>Colorado v. Kansas</i> , 320 U. S. 383 (1943)	13
<i>Connecticut v. Massachusetts</i> , 282 U. S. 660 (1931)	13
<i>Cook v. United States</i> , 288 U. S. 402 (1933)	35
<i>Coyle v. Smith</i> , 221 U. S. 559 (1911)	17, 33
<i>Cunard S. S. Co. v. Mellon</i> , 262 U. S. 100 (1923)	34
<i>Florida v. Georgia</i> , 17 How. 478 (1854)	13
<i>Georgia v. Pennsylvania Railroad</i> , 324 U. S. 439 (1945)	14, 16
<i>Georgia R. Co. v. Redwine</i> , 342 U. S. 299 (1952)	37
<i>Heffring v. Davis</i> , 301 U. S. 619 (1937)	30
<i>Hopkins Savings Association v. Cleary</i> , 296 U. S. 315 (1935)	17
<i>Illinois Central Railroad Co. v. Illinois</i> , 146 U. S. 387 (1892)	29
<i>Kansas v. Colorado</i> , 206 U. S. 46 (1907)	13, 18
<i>Larson v. Domestic and Foreign Corp.</i> , 337 U. S. 682 (1949)	37
<i>Louisiana v. Mississippi</i> , 282 U. S. 458 (1931)	13
<i>Massachusetts v. Mellon</i> , 262 U. S. 447 (1923)	15, 16, 17
<i>Missouri v. Holland</i> , 252 U. S. 416 (1920)	16, 17
<i>Missouri v. Illinois</i> , 180 U. S. 208 (1901)	14, 18
<i>Missouri v. Illinois</i> , 200 U. S. 496 (1906)	18
<i>Missouri v. Iowa</i> , 7 How. 660 (1849)	13
<i>Missouri v. Kentucky</i> , 11 Wall. 395 (1870)	13

	Page
<i>New Jersey v. New York</i> , 5 Pet. 284 (1830)	13
<i>New York v. New Jersey</i> , 256 U. S. 296 (1921)	14
<i>Pennsylvania v. West Virginia</i> , 262 U. S. 553 (1923) ..	14
<i>Philadelphia Co. v. Stimson</i> , 223 U. S. 605 (1912) ..	37
<i>Rhode Island v. Massachusetts</i> , 12 Pet. 657 (1838) ..	13
<i>Skirjotes v. Florida</i> , 313 U. S. 69 (1941)	17, 33
<i>Texas v. White</i> ; 7 Wall. 700 (1868)	33
<i>United Kingdom v. Norway</i> , 1951 I.C.J. Report 116 ..	19
<i>United States v. Beebe</i> , 127 U. S. 338 (1888)	31
<i>United States v. California</i> , 332 U. S. 19 (1947) ...	2, 4, 9, 10, 20, 28
<i>United States ex rel. Chapman v. Federal Power Commission</i> , 345 U. S. 153 (1953)	15
<i>United States v. Louisiana</i> , 339 U. S. 699 (1950) ...	5, 10
<i>United States v. Texas</i> , 339 U. S. 707 (1950) ...	5, 10, 17, 20, 32
<i>United States v. Trinidad Coal Co.</i> , 137 U. S. 160 (1890)	31
<i>Virginia v. West Virginia</i> , 11 Wall. 39 (1870)	13
<i>Wisconsin v. Illinois</i> , 278 U. S. 367 (1929)	13
<i>Wyoming v. Colorado</i> , 259 U. S. 419 (1922)	13

CONSTITUTIONAL PROVISIONS, STATUTES AND TREATIES:

Article I, Section 8, Constitution	21
Article III, Sections 1 and 2, Clauses 1 and 2, Con- stitution	1, 11
Article IV, Section 3, Clauses 1 and 2, Constitu- tion	2, 3, 9, 20, 21, 24, 25, 26, 27, 28, 30
Act of March 2, 1819, c. 47, 3 Stat. 489	
Act of April 8, 1812, c. 50, 2 Stat. 701	4
Act of March 3, 1845, c. 48, 5 Stat. 742	4
Act of September 9, 1850, c. 50, 9 Stat. 452	4
Joint Resolution No. 8 of March 1, 1845, 5 Stat. 797 ..	4
Title 28 United States Code, Section 1251	1, 11
Homestead Acts, Rev. Stat. Sec. 2289 et seq., 43 U.S.C.A., Secs. 161, et seq. /	31
Timber and Stone Acts, 20 Stat. 89, 43 U.S.C.A., Secs. 311, et seq.	31
Carey Act, 28 Stat. 422, 43 U.S.C.A., Secs. 641, et seq.	31

	Page
Desert Land Act, 19 Stat. 377, 43 U.S.C.A., Secs. 321, et seq.	31
43 Stat. 1761	12, 35
43 Stat. 1815	35
43 Stat. 1875	35
44 Stat. 2013	35
44 Stat. 2395	35
46 Stat. 2446	35
Act of May 16, 1941, L. Texas, 47th Leg., p. 454, as amended by Act of May 23, 1947, L. Texas, 50th Leg., p. 451; Vernon's Ann. Civ. Stat. Art. 5415a	4
6 Dart. La. Gen. Stat. (1939), Secs. 9311.1-9311.4, 49 La. Rev. Stat. (1950) Secs. 1 and 2	4
Fla. Const., Art. I, 1868	4

MISCELLANEOUS:

Order of December 3, 1951, 342 U. S. 891	19
U. S. Tariff Commission Report No. 152, Treaties Affecting the Northeastern Fisheries, chap. 2, 5, 8, 10.	12, 13
1 Malloy, Treaties, 631	12
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Joint Hearings before the Committees on the Judiciary, Congress of the United States, 80th Cong., 2d Sess., on S. 1988 and similar House Bills.	22, 23, 24
Farrand, Records of the Federal Convention, Vol. III, page 404	25
Beveridge, Life of John Marshall, Vol. 1, p. 401	25
1 Hackworth, Digest of International Law, 639-41, 783 et seq.	12, 13, 19
5 Hackworth, Digest of International Law, 342-346.	13
Report No. 133 of Senate Committee on Interior and Insular Affairs to Accompany S. J. Res. 13, 83d Cong., 1st Sess., March 27, 1953, p. 8.	31
Department of State Bulletin, Vol. XXVIII, No. 725, May 18, 1953, p. 721	35
Articles of Confederation	6, 35, 36
Journal of the Virginia Convention of 1788.	6, 7, 23, 24, 25, 26, 27
Vol. 99 Cong. Rec. 4266	19

Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

BRIEF FOR COMPLAINANT.

JURISDICTION.

This is an action by the State of Rhode Island against the State of Louisiana, the State of Florida, the State of Texas and the State of California, and George M. Humphrey, a citizen of the State of Ohio, Douglas McKay, a citizen of the State of Oregon, Robert B. Anderson, a citizen of the State of Texas, and Ivy Baker Priest, a citizen of the State of Utah. The jurisdiction of this Court is invoked under authority of Article III, Section 2, Clauses 1 and 2 of the United States Constitution and 28 U. S. C. 1251.

QUESTIONS PRESENTED.

1. In view of the holdings of this Court in *United States v. California*, 332 U. S. 19 (1947) and the related *Louisiana* and *Texas* cases, to the effect that the resources that lie beneath the sea off the coasts of the United States do not constitute "property", either of the Federal Government or of the adjoining states, did Congress, in enacting Public Law 31, 83d Congress, 1st Session, c. 65, exceed its Constitutional powers in purporting to convey to the adjoining states the "property" rights of the Federal Government with respect to these resources?

2. In view of the holdings of this Court that the Federal Government has "paramount rights" with respect to these resources, and in view of its holdings that these Federal "paramount rights" derive from the sovereignty of the United States and from the Constitutional duty of Congress "to provide for the common defense", is the nature of the Federal Government's interest in these off-shore areas a completely non-delegable Federal responsibility, rather than a "property" right to which the "property clause" of the Constitution (Art. IV, Sec. 3, cl. 2) can be applied?

3. Aside from the inapplicability of the "property clause" of the Constitution, is Public Law 31 an invalid assertion of Constitutional power, since it is not a proper exercise of the trust under which the United States holds its interest in these lands and resources under the Constitution?

4. Is Public Law 31, which attempts to give to the defendant states the royalties from the development of mineral and other resources in these areas, which royalties accrued after this Court had held that such resources were subject to jurisdiction and control of the United States and appertain to it because of its sovereignty, a valid exercise of said trust?

5. Is Public Law 31, which purports to authorize assertions by the defendant states of ownership, dominion and power and exclusive jurisdiction and control of the lands, minerals, marine animal and plant life and other resources lying seaward of the ordinary low water mark on the coasts of the defendant states, a violation of the Constitutional guaranty to Rhode Island to be treated on an equal footing with the defendant states?

6. In view of the long accepted rule of international law and the historic position of the Federal Government with respect to the coastal waters and the land and its contents underlying the same, that the paramount rights therein and power over such waters and land to the territorial limits of the United States belong to the United States, should Public Law 31 be construed to authorize the assertions of Louisiana, Florida and Texas that their territories include a belt of territorial waters nine nautical miles in width?

7. If so construed, are the purported authorizations of Public Law 31 to such territorial claims by Louisiana, Florida and Texas, a violation of the Constitutional guaranty to Rhode Island to be treated on an equal footing with Louisiana, Texas and Florida?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

Article IV, Section 3, of the Constitution of the United States provides:

"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

"The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the

United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Public Law 81, 83d Congress, 1st Session, c. 65, known as the Submerged Lands Act, is set out in full in Appendix A to this brief, pages 38-44, *infra*.

The relevant portions of the Joint Resolution admitting Texas (Joint Resolution No. 8 of March 1, 1845, 5 Stat. 797), and of the Acts of Congress admitting Louisiana (Act of April 8, 1812, c. 50, 2 Stat. 701), Florida (Act of March 3, 1845, c. 48, 5 Stat. 742), and California (Act of Sept. 9, 1850, c. 50, 9 Stat. 452) are set forth in Appendix A to this brief, pp. 45-46, *infra*.

The legislative acts setting forth the boundary claims of Louisiana (6 Dart. La. Gen. Stat. (1939), Secs. 9311.1-9311.4, 49 La. Rev. Stat. (1950), Secs. 1 and 2), Texas (Act of May 16, 1941, L. Texas, 47th Leg., p. 454, as amended by Act of May 23, 1947, L. Texas, 50th Leg., p. 451, Vernon's Ann. Civ. Stat. Art. 5415a), and the constitutional provision setting forth the boundary claims of Florida (Fla. Const. Art. 1, 1868) are set forth in Appendix A to this brief, pp. 46-49, *infra*.

STATEMENT.

This action is by Rhode Island against the States of Louisiana, Florida, Texas and California and against George M. Humphrey, acting under color of authority as Secretary of the Treasury, Douglas McKay, acting under color of authority as Secretary of the Interior, Robert B. Anderson, acting under color of authority as Secretary of the Navy, and Ivy Baker Priest, acting under color of authority as Treasurer of the United States.

In *United States v. California*, 332 U. S. 19 (1947), this Court held that the submerged lands and natural resources lying seaward of the ordinary low water mark off the coast of California were subject to the paramount rights, jurisdiction and control of the Federal Government which

had the right to license the development of these natural resources. In *United States v. Louisiana*, 339 U. S. 699 (1950), and *United States v. Texas*, 339 U. S. 707 (1950), this Court reached the same decision as to lands off Louisiana and Texas and, in effect, applied its holdings to all coastal areas off the coast of the United States.

Before these decisions the defendant States of Louisiana, Texas, and California had asserted the right to and in some cases had licensed the development of such natural resources and had applied the royalties therefrom to the exclusive benefit of the citizens of their respective States. After the decisions the royalties, amounting approximately to \$62 million, derived from such leases have been impounded or held in escrow.

Public Law 31, which was enacted on May 22, 1953, purports to release to the coastal states all right, title or interest in the subsoil and natural resources (with certain exceptions), of the submerged lands seaward of the low water mark off their coasts, and declares they may develop these resources for their own use. The law also directs the individual defendants to release to the three defendant states of Louisiana, Texas and California, the sum of \$62 million now impounded or held in escrow.

The law also defines and attempts to limit the boundaries of the coastal states so that the boundaries of Rhode Island are limited to three geographic miles seaward from the ordinary low water mark off its coasts or from the seaward limit of its inland waters. The three defendant States of Louisiana, Florida and Texas, however, so construe Public Law 31 (and there are indications that Congress so intended) as to claim a belt nine nautical miles in width and the natural resources within that belt. The individual defendants have made it clear they will acquiesce in this claim despite the long standing policy of the United States and the accepted principle of international law that the permissible width of such belt cannot be more than three nautical miles.

Although the law declares it applies equally to all coastal states—except, as already stated, that some of the States bordering the Gulf of Mexico are, in certain circumstances, allowed nine nautical miles—the fact is that its purpose and effect is limited to the only valuable natural resources at present known off the coasts of the United States which are located solely off the coasts of Louisiana, Florida, Texas and California. Therefore, these four defendant states are the only real beneficiaries of the law and are thus placed in a favored category superior to the other coastal states of the Union.

The actions threatened to be taken under color of Public Law 31 by the defendant states and by the individual defendants will cause irreparable injury to Rhode Island and its citizens and its people unless restrained by this Court. Rhode Island and its citizens will lose their equitable interest (held by the Federal Government as their trustee) in the resources of the marginal seas and the royalties heretofore derived and to be derived hereafter from the development of such resources, and will also be deprived of their equitable interest in the sum of \$62 million now impounded or in escrow under the control of the individual defendants.¹ Further, the sovereignty of

¹ It is interesting to compare a similar attempt, made at the time the Articles of Confederation were in effect. It had been proposed that navigation rights on the Mississippi be granted to Spain. This attempt was defeated, on the merits. In addition, it was the contention of the opponents of the attempt that the Congress (both under the Articles of Confederation and under the Constitution) lacked power to effect such a grant. James Madison, the Father of the Constitution, speaking at the Virginia Convention of 1788 (called for the purpose of ratifying or rejecting the Constitution), discussed the proposed disposition in these words:

"I readily confess that neither the old confederation, nor the new Constitution, involves a right to give the navigation of the Mississippi. It is repugnant to the law of nations. I have always thought and said so. Although the right be denied, there may be emergencies which will make it necessary to make a sacrifice. But there is a material difference between emergencies of safety in time of war, and those which may

Rhode Island as an original State will be rendered inferior to the sovereignty of the four defendant states because of the granting to these states of the natural resources which this Court has already held to be an attribute of sovereignty of the United States. Rhode Island will also have a status of inferior sovereignty since, unlike the three defendant states of Louisiana, Florida, and Texas it is not permitted to extend its territorial boundaries nine nautical miles off the coast, but is limited to a belt three nautical miles in width and to the natural resources thereunder.

Rhode Island thus contends that Public Law 31 is unconstitutional for all of the several reasons stated in detail below and, therefore, asks for injunctive relief against the actions already taken and proposed to be taken by the defendant states and the individual defendants under color of this law.

relate to mere commercial regulations. You might on solid grounds deny in time of peace, what you give up in time of war."

(Quoted from James Madison's remarks, June, 1788, at the Virginia Convention—Journal of the Virginia Convention of 1788, page 246).

And, speaking on this same occasion with respect to the consideration which Congress had given to the proposed gift, Madison said:

"New Jersey . . . gave instructions to her delegates to oppose it. And what was the ground of this? I do not know the extent and particular reasons of her instructions. But I recollect, that a material consideration was, that the cession of that river would diminish the value of the western country, which was a common fund for the United States, and would consequently tend to impoverish their public treasury. These, Sir, were rational grounds." (Emphasis added); (*Ibid.*, p. 247).

For a detailed review of the statements on this subject made by John Marshall, Governor Randolph, and others, at the Virginia Convention of 1788, see Appendix C, to this brief, pp. 53-64, *infra*.

SUMMARY OF ARGUMENT.

I

Rhode Island Has Standing To Sue.

Rhode Island here sues as quasi-sovereign or *parens patriae* for its citizens and also as a sovereign state. As quasi-sovereign Rhode Island is suing to protect the economic welfare of its citizens, a large number of whom are employed in the New England fishing industry, particularly that part which fishes off the Grand Banks of Canada and within nine nautical miles of the low water mark of the shores of New Brunswick, Newfoundland and Nova Scotia. This industry has been and is engaged in a fierce competitive struggle with the Canadian fishing industry. Treaties now exist between Great Britain and the United States which recognize the three mile territorial limit. Three of the defendant states, Louisiana, Florida and Texas, acting under color of Public Law 31, threaten to assert ownership of the natural resources beyond the three mile limit, and such assertions, unless prevented by this Court, will seriously and adversely affect the fishing rights of the New England fishing industry off Canada.

Rhode Island also asserts beneficial interests in the lands, resources and revenues therefrom beyond the low water mark of the coasts or beyond the seaward limits of the inland waters of the defendant states. These lands and resources are held in trust for the benefit of the citizens of the United States, including the citizens and people of Rhode Island.

As sovereign Rhode Island brings this action to protect its interest in these natural resources. To deprive Rhode Island of its fair share of these resources denies to it sovereignty equal to that of the defendant states. Rhode Island must be treated on an equal footing with the defendant states of Louisiana, Florida and Texas with respect to the width of the belt of territorial waters off her shores. These three defendant states here threaten to attempt to extend their jurisdiction to the high seas.

II

Public Law 31 is invalid since Congress has no power whatever to dispose of the Federal Government's "paramount rights" with respect to these resources, since the "paramount rights" of the Federal Government do not constitute "property" within the meaning of Article IV, Section 3, Clause 2 of the Constitution, but constitute instead one attribute of a non-delegable responsibility of national sovereignty—namely, the responsibility of the Federal Government to provide for the common defense and to conduct foreign relations.

In *United States v. California*, 332 U. S. 19, this Court declined to rule that either the Federal Government or California held these resources as "property rights", but instead held that the United States had "paramount rights" over the marginal lands and resources because of the responsibility of the Federal Government to provide for the common defense and conduct foreign relations. Article IV, Section 3, Clause 2 of the Constitution provides that "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the territory *or other property* belonging to the United States." Because of the nature of the Federal "paramount rights" there is no "Federal property" to be disposed of in the sense the framers of the Constitution meant when they gave to the Congress the right to dispose of Federal property. Congress cannot, therefore, divest the Government of its "paramount rights" in these resources because their nature is not that of "property" but is a responsibility which cannot be delegated.

The debates of the Constitutional Convention of 1787 show that the framers intended to give the Federal Government the power to dispose of the Northwest Territory and such other similar "property" in the traditional sense of that term as the United States might acquire. The entire constitutional history of Article IV, Section 3, Clause 2, as reflected in the Convention and in the subsequent debates of the Virginia Convention on ratification indicate that the framers of the Constitution did not contemplate giving to

Congress the power to dispose of such resources as these marginal lands.

III.

Aside from the basic inapplicability of the "property clause" of the Constitution, Public Law 31 is an unconstitutional exercise of the power of Congress to dispose of public lands.

The submerged lands and natural resources here in controversy do not and have never belonged to the defendant states. *United States v. California*, 332 U. S. 19 (1947); *United States v. Louisiana*, 339 U. S. 699 (1950), and *United States v. Texas*, 339 U. S. 707 (1950). In holding the paramount rights and dominion over these resources the United States must act in its constitutional capacity as trustee for all the people and not just for those who happen to be resident in the four defendant states. Public Law 31 is not an exercise by Congress of its judgment as a trustee but, as its legislative history shows, is merely a Congressional attempt to reverse the three decisions cited above of this Court. As such, it is a legislative invasion of the judicial power.

IV.

Public Law 31 is unconstitutional in its denial to the State of Rhode Island of its right to be treated on an equal footing with the defendant states.

The defendant states were admitted into the Union on an equal footing with the thirteen original states, of which Rhode Island is one. Rhode Island is not being accorded equal footing, which is guaranteed by the Constitution, because the equality accorded coastal states by Public Law 31 is purely theoretical. The known valuable interests in the submerged lands are, factually, only off the coasts of the defendant states. Also Public Law 31 violates the equal footing clause by allowing Louisiana, Florida and Texas to include a territorial belt off their coasts nine nautical miles in width while limiting Rhode Island to three miles. Such claims under color of Public Law 31 will, unless re-

strained by this Court, inevitably invite retaliation by the Dominion of Canada against the New England fishing industry, in which many citizens of Rhode Island are employed.

V.

The suit of Rhode Island is not a suit against the United States.

The individual defendants, acting as public officials under color of Public Law 31, are acting in excess of their statutory authority and thus may be enjoined. In attempting to enforce an unconstitutional statute they may also be enjoined. Their actions in either situation are not the acts of the sovereign.

ARGUMENT.

I

The State of Rhode Island Has Standing To Sue.

This original action is brought by Rhode Island, pursuant to Article III, Sections 1 and 2, of the Constitution and 28 U. S. C. § 1351. Rhode Island brings this action as a quasi-sovereign or *parens patriae* for its citizens. Also, in its capacity as a sovereign state, Rhode Island asserts that a controversy exists which is justiciable under the Constitution.

As quasi-sovereign and *parens patriae* for its citizens, Rhode Island claims an equitable interest in the lands and resources and all revenues to be derived therefrom in the submerged lands off the shores of the four defendant states. As one of the forty-eight States it claims also an equitable interest in some part of the sum of \$62 million now in escrow or impounded under the control of the individual defendants. A large number of its citizens are engaged in the New England fishing industry, which industry now sails the international waters belonging to the family of nations lying outside of the three mile belt. More particularly, many of these citizens of Rhode Island earn their livelihood in that part of the New England fishing industry

which sails and fishes off the Grand Banks of Canada and within nine nautical miles of the low water mark of the shores of Newfoundland, New Brunswick and Nova Scotia. Should Public Law 31 be construed to allow the three defendant states, Louisiana, Florida and Texas—to extend their belts nine nautical miles into the Gulf of Mexico, these citizens of Rhode Island will be placed in danger of losing their livelihood.

The New England fishing industry, including that conducted by citizens of Rhode Island, has long fiercely competed for its catch with the fishing industry of Canada and Newfoundland. An important part of this catch comes from waters off the coasts of Newfoundland and Labrador. From the incipieny of this industry friction has existed between New Englanders and inhabitants of Newfoundland over fishing rights in these waters.²

By the treaty of Oct. 20, 1818 between Britain and the United States American fishermen have the right to fish off the southern coasts of Labrador and Newfoundland, and are excluded "within three marine miles of any of the coasts . . . " elsewhere in Canada.³

This implicit recognition of three-mile territorial limits was made explicit by the Treaty of Jan. 23, 1924 between Britain (for the United Kingdom and dominions overseas) and the United States⁴ which was binding on Canada as well as Newfoundland.⁵

The rights of American fishermen under the 1818 Treaty have been the subject of long and nearly continuous discord and retaliation between the United States on the one hand

² U. S. Tariff Commission Report No. 152, *Treaties Affecting the Northeastern Fisheries*, chaps. 2, 5, 8, 10.

³ 1 Malloy, *Treaties*, etc., 631. 1 Hackworth, *Digest of International Law*, 783.

⁴ Treaty Series No. 685, 43 Stat. 1761.

⁵ *Joint Interim Report, and Joint Final Report of the Commissioners in the Case of the "I'm Alone,"* dated June 30, 1933, and January 5, 1935, resp., 3 *Reports of International Arbitral Awards*, p. 1611. U. N. Pub. 1949 V. 2.

and Newfoundland and Britain on the other,⁶ even with mutual agreement on the territorial limits. Now Louisiana, Florida and Texas undertake assertions of sovereignty in the Gulf of Mexico which, if authorized by Public Law 31, must necessarily and inevitably operate as a renunciation of the United States Treaty obligation to recognize the three-mile belt as the limit of territorial waters. There can be, and history indicates that there will be, only one result from this—such assertions will release Canada and Newfoundland from identical obligations on their part,⁷ and American fishermen, including citizens of Rhode Island, will be excluded from coastal fisheries they formerly enjoyed. The interest of Rhode Island in preventing large scale renewal of earlier troubles in these northern fisheries can only be protected by bringing this suit.

Rhode Island here appears as trustee, guardian, and representative of its citizens. This Court has long permitted a state to maintain a suit on behalf of its citizens as “quasi-sovereign” and “*parens patriae*” even when the state has itself no direct property interest as owner in the rights it seeks to protect. It has taken jurisdiction of disputes concerning state boundaries;⁸ it has allowed a suit by one state to prevent diversion by another state of the flow of an interstate stream;⁹ a state can sue to object to the pollution of an interstate stream flowing through its

⁶ U. S. Tariff Commission Report, *supra*; 1 Hackworth 783 et seq. 5 Hackworth, Digest of International Law, 342-346.

⁸ See, e.g., *Virginia v. West Virginia*, 11 Wall. 39 (1870); *New Jersey v. New York*, 5 Pet. 284 (1830); *Rhode Island v. Massachusetts*, 12 Pet. 657 (1838); *Missouri v. Iowa*, 7 How. 660 (1849); *Florida v. Georgia*, 17 How. 478 (1854); *Alabama v. Georgia*, 23 How. 505 (1859); *Missouri v. Kentucky*, 11 Wall. 395 (1870); *Louisiana v. Mississippi*, 282 U. S. 458 (1931).

⁹ *Kansas v. Colorado*, 206 U. S. 46 (1907); *Colorado v. Kansas*, 320 U. S. 383 (1943); *Connecticut v. Massachusetts*, 282 U. S. 660 (1931); *Wyoming v. Colorado*, 259 U. S. 419 (1922); *Wisconsin v. Illinois*, 278 U. S. 367 (1929).

boundaries.¹⁰ The right of a state to enjoin the enforcement of a statute of another state which promised to cut off a supply of natural gas into the complaining state has been upheld on the ground that the health and comfort of its citizens and industries would be injured. In that case this Court described the complaining state "as the representative of the consuming public."¹¹ In *Georgia v. Pennsylvania Railroad*, 324 U. S. 439 (1945), the complaining state was permitted to bring an original suit to enforce the anti-trust laws on the grounds that the economy of the state and the welfare of its citizens had been injured by a conspiracy of the defendant railroads.

Further, the citizens of Rhode Island would be adversely affected should the sum of \$62 million now held in escrow by the individual defendants be turned over to three of the defendant states, Louisiana, Texas and California. Congress must expend these funds subject to the Constitutional trust by which they are held; it cannot discriminate against forty-five of the states and favor the other three. Whatever standard or formula the Congress may see fit to apply, whether based on need or population, or whatever requirements from the several states it may exact, the Congress must apply those standards and requirements fairly and equitably "across the board." Under any such equitable formula Rhode Island and its citizens are entitled to a substantial portion of the \$62 million fund.

Similarly Rhode Island and its citizens are entitled to a substantial portion of the vast sums which will accrue in royalties from the future development of the natural resources in these submerged lands. The value of these natural resources is presently estimated as at least \$50 billion. By the *California*, *Louisiana* and *Texas* decisions such resources are under the paramount jurisdiction and control of the Federal Government. It has the right to

¹⁰ *Missouri v. Illinois*, 180 U. S. 208 (1901); *New York v. New Jersey*, 256 U. S. 296 (1921).

¹¹ *Pennsylvania v. West Virginia*, 262 U. S. 553, 591 (1923).

develop such resources and the royalties derived from such development must be devoted to the benefit of all the people of the United States. Unless this Court enjoins the state and individual defendants from taking the actions they are proposing under color of Public Law 31, Rhode Island will be denied any interest whatsoever in these natural resources. This interest is neither ephemeral nor insubstantial. It is true that direct benefits to Rhode Island from such royalties must arise from future Congressional action. But this is true of any benefit to be derived by states and citizens from the Federal Government whether it takes the form of a grant-in-aid or any other form.¹²

It is anticipated that the defendant states and individuals will claim that *Massachusetts v. Mellon*, 262 U. S. 447 (1923) controls the case at bar. This Court there held that Massachusetts had no standing to enjoin the Secretary of the Treasury from allocating funds to those states joining the Federal Government in a grant-in-aid program, under the Maternity Act of 1921, to reduce maternal and infant mortality. The *Mellon* case does not apply to Rhode Island's interest as quasi-sovereign. Massachusetts there could have withheld consent to, and thereby prevented, the Federal action involved, so far as Massachusetts was concerned. But under Public Law 31, Rhode Island is given no such choice to consent, or to withhold its consent, that the natural resources, the impounded sum of \$62 mil-

¹² Rhode Island's interest in the revenues here is more direct than that of the Secretary of the Interior who, in *United States ex rel. Chapman v. Federal Power Commission*, 345 U. S. 153 (1953), was held to have sufficient standing to bring an appeal from a Federal Power Commission order granting a license to a utility to construct a hydro-electric facility at Roanoke Rapids, North Carolina. There, the Secretary's only interest was his statutory duty to act as the marketing agent of surplus power from public hydro-electric projects. He could so act only after the Congress had first authorized the construction of a public project, then appropriated the money for construction, and then only after the completion of the dam.

lion, and what revenues are received from future development should be given to the four defendant states.

The question which Massachusetts presented this Court in *Massachusetts v. Mellon* was actually one under the Tenth Amendment. Its contention came down to the claim that Congress had usurped the reserve powers of the states by enacting the Maternity Act of 1921, even though nothing was to be done under that statute without the consent of the states. This Court, therefore, took the view that the question was a political and not a judicial matter.

Massachusetts v. Mellon goes no farther than that Massachusetts was not entitled to attack the constitutionality of the statute because the interest it claimed was not in fact endangered. It was expressly noted that this holding was not so general as to say that a state may never sue to protect its citizens against any form of enforcement of unconstitutional Acts of Congress.¹³

• Rhode Island and its citizens here have a substantial economic interest which this Court can protect. In the *California* case, that part of these same natural resources which lay off the coast of California was involved. This Court found that the question of who owned or who had paramount rights and power over them was indeed a justiciable controversy. *United States v. California*, 332 U. S. 19, 24-25 (1947). This is merely a further step in the same controversy.

The case of *Georgia v. Pennsylvania Railroad*, 324 U. S. 439 (1945) here seems to be determinative of Rhode Island's standing as *parens patriae*. There the State of Georgia was given standing to protect the interests of its citizens and the economy of the State even though the anti-trust laws by providing for suits by the Federal Government gave the Federal Government the right to protect the interest of the citizens of Georgia.

A state's right to attack the constitutionality of a Federal Statute in appropriate circumstances has been recognized. In *Missouri v. Holland*, 252 U. S. 416 (1920), the

¹³ 262 U. S. at 485.

State of Missouri was given standing to attack the enforcement of a Congressional act as invading the rights reserved for the States under the Tenth Amendment.¹⁴

Besides suing as *parens patriae* to protect its economy and the interests of its citizens, Rhode Island here sues as a sovereign state to protect its right to be treated on an equal footing with the defendant states.

Rhode Island is one of the thirteen original states. The defendant states were later admitted to the Union with the right to be treated on an equal footing with Rhode Island, the other original states, and all later admitted states.¹⁵ *United States v. Texas*, 339 U. S. 707 at 716, held that the equal footing clause applies to these same natural resources here in controversy. In that case this Court found that the very essence of the controversy was the question of sovereignty (339 U. S. at 719):

“[A]lthough *dominium* and *imperium* are normally separable and separate, this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty.”

Public Law 31 attempts to transfer all interests in the natural resources of these submerged lands to the defendant states. This the defendants propose to do despite Rhode Island's sovereign right to be treated on an equal footing. Such transfer applies not only to all interest to be derived from these resources in the future but also to the sum of \$62 million derived in the past from these re-

¹⁴ Despite the intervening case of *Massachusetts v. Mellon*, *Missouri v. Holland* was cited with approval in *Hopkins Savings Association v. Cleary*, 296 U. S. 315 (1935), where this Court held that a state attempting to protect creditors and investors in state building and loan associations had standing as quasi-sovereign and *parens patriae* to raise the constitutionality of a Federal statute which allowed such building and loan associations to become Federal associations without permission of the state.

¹⁵ *Coyne v. Smith*, 221 U. S. 559, 567 (1911); *Skiriotes v. Florida*, 313 U. S. 69, 77 (1941); see *United States v. Texas*, 339 U. S. 707, 716-718 (1950).

sources since the *California*, *Louisiana* and *Texas* cases, and which has been impounded under the control of the individual defendants. The defendant individuals have already made it clear that they will so transfer these funds unless restrained by this Court.

Further, three of the defendant states—*Louisiana*, *Texas* and *Florida*—propose to rely on Public Law 31 to extend their boundaries nine nautical miles into the Gulf of Mexico. Under long settled principles of international law and consistent adherence by the United States to these principles, the boundaries of Rhode Island extend only to the ordinary low water line. Beyond that seaward the predominant right and powers are in the United States. Beyond the ordinary low water mark the state has only certain police powers. Rhode Island, despite its status as an original state, indeed an original maritime state, is in immediate jeopardy of being placed in a position of sovereignty clearly inferior to these three defendant states.

Rhode Island's sovereign right to be treated equally with other states with respect to the width of territorial waters is a justiciable controversy under the Constitution. This Court regards controversies between two or more states as comparable to disputes between sovereigns. Had there been no Union, Rhode Island would have here the kind of right and interest which it would raise directly with the other national states of *Louisiana*, *Florida* and *Texas* in one of three ways: diplomatic negotiation, international arbitration, or force. By joining the Union, however, Rhode Island surrendered to the Federal Government its sovereign right to exercise any of these three national powers. It must, therefore, look to the Federal Government to provide a remedy for the injury to its sovereignty.¹⁶ A dispute such as this between the States is a substantial and serious one.

The attempt of these three defendant states under color of Public Law 31 to extend their boundaries nine nautical

¹⁶ *Missouri v. Illinois*, 180 U. S. 208 (1901); *Missouri v. Illinois*, 200 U. S. 496, 518 (1906); *Kansas v. Colorado*, 206 U. S. 46, 47 (1907).

miles into the Gulf is most similar, if not identical, to the attempts of Mexico to extend her boundaries nine nautical miles into the Gulf.¹⁷ Rhode Island here insists that in accordance with international law the area off the coasts of these three defendant states which is seaward of ordinary low water mark is part of the national domain to the bounds of United States territory, the three-mile limit, and thence is part of the high seas which are the public domain of the family of nations and must therefore remain free from any assertions of sovereignty by these three states.¹⁸ This assertion by the three defendant states is also similar to the attempt by the U. S. S. R. to claim a belt of territorial waters twelve miles wide off the coast of Siberia. This unwarranted assertion recently led to a protest by the Government of the United States.¹⁹

Nor does the fact that Rhode Island is not here claiming that its interests are in the nature of a property right affect its standing in this Court. In a long line of decisions, states have been permitted to bring boundary disputes without the showing of a property right in the state bringing the suit.²⁰

In the subject matter of this very controversy this Court has referred to a Master the method of determining the seaward boundaries off the coast of California.²¹

¹⁷ 1 Hackworth, *Digest of International Law*, 639-41.

¹⁸ See *Fisheries Case*, (*United Kingdom v. Norway*) 1951 I. C. J. Reports 116, 126.

¹⁹ See Vol. 99 Cong. Rec. 4266.

²⁰ See cases cited in footnotes 8 and 9, page 13, *supra*.

²¹ Order of December 3, 1951, 342 U. S. 891.

II

Public Law 31 is invalid since Congress has no power whatever to dispose of the Federal Government's "paramount rights" with respect to these resources, since the "paramount rights" of the Federal Government do not constitute "property" within the meaning of Article IV, Section 3, Clause 2 of the Constitution, but constitute instead one attribute of a non-delegable responsibility of national sovereignty—namely, the responsibility of the Federal Government to provide for the common defense and to conduct foreign relations.

The Constitution, in Article IV, Section 3, Clause 2, provides that the "Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States:". The remainder of this same sentence in this very clause reads as follows: "and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State." As this language clearly reflects, the Constitutional Convention was dealing with the Northwest Territory and the claims of the United States and of the several states therein. And see the discussion on pages 21-24 of this brief of the predecessor legislation to Public Law 31 that was before Congress in 1948.

In the *California* case, both the Federal Government and the State of California asked this Court to find that the "property rights" were theirs. This Court expressly declined to rule on the question of ownership, but ruled that the total of rights were summed up in the expression "paramount rights and power", leaving only police rights in the coastal states.

This Court further held that these "paramount rights" of the United States are possessed as an attribute of national sovereignty because of the responsibility of the Federal Government to provide for the common defense and to conduct foreign relations. *United States v. California*, 332 U. S. 19, 35-36; cf. *United States v. Texas*, 339 U. S. 707. In view of the nature of these Federal "paramount rights" there is no Federal "property" to be disposed of.

in the sense employed by the framers of the Constitution when they gave the Congress the right to dispose of Federal "property".²² Accordingly, Congress cannot validly divest the Federal Government of the "paramount rights" of the Federal Government with respect to these resources. In short, the Federal Government, instead of owning "property" which can be disposed of by the Congress, has a sovereign responsibility which it cannot delegate.

The debates at the Constitutional Convention of 1787 on Article IV, Section 3, Clause 2 (the "property clause" of the Constitution), show that what the draftsmen intended was to give the Federal Government the power to dispose of the Northwest Territory, and such other similar "property", in the traditional sense of that term, as the United States might subsequently acquire.

The power to dispose of property is not referred to in any manner whatever in Article I, Section 8, where the powers of Congress are specifically enumerated. This power appears in Article IV, Section 3, Clause 2 which follows immediately the paragraph (Article IV, Section 3, Clause 1) dealing with the admission of new states to the Union. The admissions paragraph and the "property clause" were drafted in order to take care of the problems posed by the Northwest Territory. Some of the original thirteen States claimed parts of the territory as against each other and as against the United States, and therefore it was proposed that Congress be given both the power to admit new States to the Union and the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

In terms of the legislative history of Public Law 31 itself, it is worth noting that this very point was called to the attention of a Joint Judiciary Committee of the Senate and House of Representatives, conducting hearings in 1948

²² See the discussion in the footnote at p. 9, *supra*.

on predecessor proposals substantially identical with the measure which ultimately became Public Law 31.

When this predecessor legislation was before the Congress in 1948, the specific issue here under discussion was adverted to by Representative Sam Hobbs of Alabama, in testimony which he gave before the Joint Committee.

The following colloquy, which took place on March 6, 1948,³² is of interest in this connection:

"MR. WOODWARD. Mr. Congressman, the Congress have the power to vest in the States all rights, whatever rights it has, if it sees fit, does it not?"

"REPRESENTATIVE HOBBS. No, sir. My answer is categorically, no, sir, with the most profound respect for the distinguished gentleman, I cannot see that at all. How you can deed somebody else's property, or how you can even quitclaim—quitclaim is a specious, weazel word . . .

"SENATOR MOORE. It is in effect a conveyance.

"REPRESENTATIVE HOBBS. Sure it is. It is an attempt to, but it is utterly innocuous. If we pass this bill tomorrow, it is not within the power of Congress, or anyone else, to deed land that does not belong to the Federal Government or to quitclaim, or to do anything that would convey it.

"I think it is perfectly clear that the high seas, to low water mark, belong to the family of nations subject to the exclusive right, which every littoral nation has, to control a three-mile belt as now decreed by the law of nations."

To much the same effect was a statement which Representative Hobbs made a few days earlier, in testimony during the same Joint Hearings, when he said:

³² Joint Hearings before the Committees on the Judiciary, Congress of the United States, 80th Cong., 2d Sess., on S. 1988 and similar House Bills, p. 998).

"I believe that the war powers granted by the Constitution to the Federal Government are paramount to any State right in the subject of sub-ocean oil." ²⁴

Again, testifying before the same Committees, Representative Hobbs said:

"I maintained, and still maintain that no one owns the oceans, that they are the common property of the family of nations, but that each littoral nation has the rights and privileges which inure to their sovereignty and that because of that sovereignty they have certain paramount rights." ²⁵

²⁴ *Op. Cit., supra*, p. 820. Representative Hobbs, a widely respected Constitutional lawyer, was known for his views as a strong upholder of States' rights. When he was asked, in connection with this testimony, how he could reconcile his views concerning the offshore resources with his views on States' rights, he said:

"I think we ought to preserve the States' rights that are, and not give them those that are not." (*Op. Cit., supra*, p. 821).

Representative Gossett, commenting on this testimony by Representative Hobbs, said:

"This Congressman is an extremely eminent lawyer, and was a judge before coming to Congress." (*Ibid.*).

²⁵ *Op. Cit., supra*, p. 895. Compare James Madison's statements in 1788, quoted in footnote 1, p. 6, *supra*. And see the related statement of Governor Randolph, at the 1788 Virginia Convention, where, discussing the possible grant to Spain of navigation rights on the Mississippi, he said:

"It will moreover be contrary to the law of nations to relinquish territorial rights. To make a treaty to alienate any part of the United States, will amount to a declaration of war against the inhabitants of the alienated part . . . Are not the states interested in the back lands, as has been repeatedly observed?" (Quoted from Governor Randolph's remarks, June, 1788, at the Virginia Convention—*Journal of the Virginia Convention of 1788*, page 257). And, in the course of these same remarks, Governor Randolph went on to make the following statement:

"The gentleman wishes us to show him a clause which shall preclude Congress from giving away this right. It is first

In this same testimony, Representative Hobbs said of the proposed legislation:

"How any Member of the Congress, the Senate or the House, can support any of these bills under the circumstances and in the face of the decision of the Supreme Court of the United States I simply cannot imagine! Impairing, if not taking away from the Federal Government, its national defense grant of power in the Constitution!"²⁶

This testimony by Representative Hobbs was based on the history of Article IV, Section 3, Clause 2 at the Constitutional Convention of 1787. From a review of the debates at the Convention, it is clear that Article IV, Section 3, Clause 2 was inserted in the Constitution in order to take care of certain problems that had arisen with respect to the Northwest Territory. At the time of the Constitutional Convention, there were disputes among the original thirteen states, and there were disputes between several of the original states and the Federal Government, concerning the disposition to be made of the Northwest Territory. In order to meet this situation, the framers of the Constitution inserted two specific provisions, as additions to the earlier drafts of the Constitution. These two provisions

incumbent upon him to show where the right is given up. There is a prohibition naturally resulting from the nature of things, it being contradictory and repugnant to reason, and the law of nature and nations, to yield the most valuable right of a community, for the exclusive benefit of one particular part. But there is an expression which clearly precludes the General Government from ceding the navigation of this river. In the 2d clause of the 3d section of the 4th Article, Congress is empowered 'to dispose of, and make all needful rules and regulations respecting the territory, or other property belonging to the United States'. But it goes on and provides, that 'nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state'. Is this a claim of the particular State of Virginia? If it be, there is no authority in this Constitution to prejudice it."

(Emphasis in original). *Ibid.*, at page 258.

²⁶ *Op. Cit.*, *supra*, p. 997.

ultimately took the form of Article IV, Section 3, Clause 1 (dealing with the admission of new states to the Union), and Article IV, Section 3, Clause 2 (dealing with the disposal of property belonging to the Federal Government).

Based on the records of the Constitutional Convention, and based on correspondence between various framers of the Constitution, it appears that this language was originally drafted by Gouverneur Morris.²⁷ In a letter which he wrote on this subject in 1803, Gouverneur Morris indicated that he was the author of these two provisions, and indicated also that *both* provisions were addressed specifically to the problems posed by the Northwest Territory. See Gouverneur Morris' letter to Henry W. Livingston, December 4, 1803, as set out in Farrand, *Records of the Federal Convention*, Vol. 3, page 404, where, addressing himself to the admission of new states to the Union, in response to an inquiry from Livingston, he said:

"Your inquiry . . . is substantially whether Congress can admit, as a new state, territory which did not belong to the United States when the Constitution was made. In my opinion they cannot. I always thought that, when we should acquire Canada and Louisiana, it would be proper to govern them as provinces . . . In wording the third section of the Fourth Article I went as far as circumstances would permit to establish the exclusion."

While it is clear that Gouverneur Morris' narrow interpretation of Article IV, Section 3, Clause 1, with respect to the admission of new states cannot be applied literally, it is nevertheless of considerable interest in connection with the current litigation, since it presents the ideas of the author of Article IV, Section 3 with respect to the limited scope which the framers of the Constitution had in mind when they drafted it—that is, the intention that this

²⁷ Gouverneur Morris, the author of this portion of the Constitution, was present at the Virginia Convention of 1788 referred to above. See Beveridge, *Life of John Marshall*, Vol. 1, p. 461.

section should be confined to the Northwest Territory. Obviously, in terms of the admission to the Union of new states, this section has been broadened to include areas which did not form part of the Northwest Territory, but which, like the Northwest Territory, have become the *property* of the United States. Applying the same principle that has resulted in extending Article IV, Section 3, Clause 1 to areas which are *similar* in their nature to the Northwest Territory, it follows that the section and clause can also be extended to apply to the disposal of property that is *similar* to the property which the Federal Government originally owned in the Northwest Territory—that is, property in the conventional sense of that term. It also follows that the “property clause” of the Constitution has *no applicability whatever* to the resources under the marginal seas off the coasts of the United States, since, as this Court has repeatedly held, those resources do not constitute “property” of either the United States or the adjoining states.²⁸

There is attached to this brief, as Appendix B, a detailed presentation of all of the references to Article IV, Section 3, Clause 2, at the Constitutional Convention of 1787, and there is also attached, as Appendix C, a detailed presenta-

²⁸ Cf. the following statements made at the Virginia Convention of 1788. *Op. Cit. supra*, by John Marshall and Governor Randolph: Governor Randolph, Journal of the Virginia Convention, at p. 259:

“I contend that *there is no power given the General Government, to surrender that navigation*. There is a positive prohibition in the words [of Article 4, Section 3, Clause 2] I have just mentioned.” (Emphasis added).

John Marshall, page 299:

“What government is able to protect you in time of war? Will any state depend on its own exertions? The consequence of such dependence and withholding this power (to raise and support armies, provide for the common defense, etc.) from Congress will be, that state will fall after state, and be a sacrifice to the want of power in the General Government. *United we are strong, divided we fall.*” (Emphasis in original).

tion of the discussion of this and related matters at the Virginia Convention of 1788.

There is one additional point that should be borne in mind in connection with the matters discussed above. The discussion presented in these pages, broadly speaking, is summed up at page 20, *supra*, in the following words:

"Public Law 31 is invalid since Congress has no power whatever to dispose of the Federal Government's 'paramount rights' with respect to these resources, since the 'paramount rights' of the Federal Government do not constitute 'property' within the meaning of Article IV, Section 3, Clause 2 of the Constitution, but constitute instead one attribute of a non-delegable responsibility of national sovereignty—namely, the responsibility of the Federal Government to provide for the common defense and to conduct foreign relations."

In other words, it is respectfully submitted that the responsibility of the Federal Government for the conduct of foreign relations, and for providing for the common defense, is a responsibility that *cannot* be delegated to some of the States, or even to all of them, under the Constitution.

But even if it were to be assumed for the purposes of argument, that there are circumstances under which the Federal Government *could* delegate some aspects of its power to provide for the common defense and to conduct foreign relations, it is respectfully submitted that the Congress did not even *purport* to effect such a delegation in Public Law 31. By its own explicit terms, Public Law 31, which in fact amounts to no more than a "quitclaim" deed, attempts to deal with the "paramount rights" of the Federal Government as if these "paramount rights" constituted "property". It is clear from the legislative history of Public Law 31 that the Congress intended to surrender its "property" interests to the adjoining states and that no other "rights" or "responsibility" of Congress was

surrendered or delegated. Since the United States has no "property" interests in the offshore areas, Public Law 31 purported to quitclaim "property" which the United States did not own, and Public Law 31 is therefore invalid. Thus, if the Court so desires this Court can strike down Public Law 31 without now having to consider whether the responsibilities and rights which flow from the "paramount rights" possessed by the United States as sovereign *could* be delegated to the states, since in the present case there was no intent on the part of Congress to give the states the powers and duties concerning the common defense and foreign relations upon which those "paramount rights" are predicated. Congress expressly stated in Public Law 31, in fact, that the statute was not intended to abridge these attributes of national sovereignty.

III.

Aside from the basic inapplicability of the "property clause" of the Constitution, Public Law 31 is an unconstitutional exercise of the power of Congress to dispose of public lands.

Even if this Court should be of the opinion that Article IV, Section 3 of the Constitution is applicable to these submerged lands, Public Law 31 is still an invalid exercise of the congressional power to dispose of public lands.

In *United States v. California*, 332 U. S. 19, 40 (1947), this Court, in commenting on the argument of the State of California that because of the delay of Federal Government officials in pressing the Federal claim over the submerged lands the Government was barred from enforcing its rights, said:

"The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; . . ." (Emphasis supplied)

The *California*, *Louisiana* and *Texas* cases, in holding that the United States has the paramount right and dominion over these lands and resources, made it clear that the same lands here in controversy are not and never were the property of the defendant states. In the *Texas* case this Court pointed out that whatever property rights did exist were "so subordinated to the rights of sovereignty as to follow sovereignty".

These property rights are thus held by the United States in its constitutional capacity as trustee for all the people, and not just for those citizens who happen to be resident in these four of the forty-eight states. The 160 million American people are all beneficiaries of this constitutional trust. Whatever disposition may be made, and whatever formula may be applied to that disposition, it must be shown that there is a benefit to the public interest, that is, the national interest.

Public Law 31 makes no attempt to meet such a standard. As its legislative history shows, in its essence it is simply a congressional attempt to overrule the three decisions of this Court. These national assets, estimated to be worth at least \$50 billion, as well as the impounded sum of \$62 million, are made available solely to the four defendant states and their citizens.

Such congressional action does not measure up to the test required of a trustee, whether public or private. It is not enough to say that there can be no judicial inquiry into legislative discretion, for congressional discretion must be exercised within the limits of a national purpose. The courts, while always sensitive to the necessity of broad discretion for trustees, have always been willing to examine whether discretion in fact exercised is within the fiduciary relationship.

And this is true of this Court. In *Illinois Central Railroad Co. v. Illinois*, 146 U. S. 387 (1892) the grant by the Illinois legislature of submerged lands in Lake Michigan to

a railroad company was held invalid under the Fourteenth Amendment. The Court there said (page 453):

"... A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties, . . . than it can abdicate its police powers in the administration of government and the preservation of the peace."

It is submitted that the grant by a state legislature to a private corporation of navigable waters is analogous to the grant here by Congress of the submerged lands to the defendant states; that the limitation of the Fourteenth Amendment on a state legislature is, at the very least, no more strict than the limitations of Article IV, Section 3, Clause 2, on the Congress, if there is to be any limitation whatsoever. And the nature of the limitation is similar—as a state legislature must act for the interest of the citizens of that state, so must the Congress legislate for and within the national interest.

Just as this Court has held that the congressional spending power has its limitations, in that it is limited by the test of the general welfare²⁹ so has it indicated that the test of public interest can be made applicable to the so-called "property clause" of Article IV. In *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288 (1936) this Court said in discussing Article IV, Section 3 (p. 338):

"That method [disposal of property], of course, must be an appropriate means of disposition according to the nature of the property, it must be one adopted in the public interest as distinguished from private or personal ends, . . ."

²⁹ *Helvering v. Davis*, 301 U. S. 619, 640 (1937).

And Congress when disposing of the public lands has in the past always met the test of public interest. Most of such dispositions of the public lands, whether by gift or otherwise, have been integrally tied to the development of the western frontier, which was clearly a development in the national interest resulting in great improvement in the welfare of the entire nation.³⁰ There was no intent to benefit the western states or territories *per se*, except as such benefits were incident to that to the whole country.

In the case at bar, however, the sole discernible benefit is to the defendant states and their own citizens, and this benefit will and can be received only at the price of taking these lands away from the other forty-four states and their citizens. As broad as the discretion of Congress admittedly is in its disposition of public property, it must ultimately be held to the necessary test of its actions as the trustee for the nation.³¹ Public Law 31 can not meet the fiduciary test, since it is in effect a straight gift for the benefit of the four defendant states in derogation of Rhode Island and its forty-three sister states, a gift which is made by reversing the *California*, *Louisiana* and *Texas* decisions of this Court.³²

³⁰ See the Homestead Acts, Rev. Stat. Sec. 2289 *et seq.*, 43 U. S. C. A., Secs. 161, *et seq.*; the Timber and Stone Acts, 20 Stat. 89, 43 U. S. C. A., Secs. 311, *et seq.*; the Carey Act, 28 Stat. 422, 43 U. S. C. A., Secs. 641, *et seq.*; the Desert Land Act, 19 Stat. 377, 43 U. S. C. A., Secs. 321, *et seq.*

³¹ See *United States v. Beebe*, 127 U. S. 338, 342 (1888); *United States v. Trinidad Coal Co.*, 137 U. S. 160, 170 (1890); *Camfield v. United States*, 167 U. S. 518, 524 (1897); *Causey v. United States*, 240 U. S. 399, 402 (1916).

³² The Report of the Senate Committee on Interior and Insular Affairs stated:

"The purpose of this legislation is to write the law for the future as the Supreme Court believed it to be in the past—that the States shall own and have proprietary use of all lands under navigable waters within their territorial jurisdiction, whether inland or seaward subject only to the governmental powers delegated to the United States by the Constitution."

Report No. 133 to accompany S. J. Res. 13, 83d Cong., 1st Sess. March 27, 1953, page 8.

IV.

Public Law 31 is unconstitutional in its denial to Rhode Island of its right to be treated on an equal footing with the defendant states.

In *United States v. Texas*, 339 U. S. 709, 719 (1950) this Court said:

"... once low-water mark is passed the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign. Today the controversy is over oil. Tomorrow it may be over some other substance or mineral or perhaps the bed of the ocean itself. If the property, whatever it may be, lies seaward of low-water mark, its use, disposition, management, and control involve national interests and national responsibilities. That is the source of national rights in it. Such is the rationale of the California Decision which we have applied to Louisiana's Case. The same result must be reached here if 'equal footing' with the various States is to be achieved. Unless any claim or title which the Republic of Texas had to the marginal sea is subordinated to this full paramount power of the United States on admission, there is or may be in practical effect a subtraction in favor of Texas from the national sovereignty of the United States. Yet neither the original thirteen States (*United States v. California*, supra (332 US pp 31, 32, 91 L ed 1895, 1896, 67 S Ct 1658) nor California nor Louisiana enjoys such an advantage. The 'equal footing' clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty (*Pollard's Lessee v. Hagan* (US) 3 How 212, 11 L ed 565, supra) which would produce inequality among the States. For equality of States means that they are not 'less or greater, or different in dignity or power.' See *Coyle v. Smith*, 221 US 559, 566, 55 L ed 853, 857, 31 S Ct 688. . . ."

Rhode Island is one of the thirteen original States of the Union. The Acts of Congress admitting the four defend-

ant states to the Union (relevant parts are set forth in Appendix A) state, in substantially identical language, that they were to be admitted into the Union on an "equal footing" with the original States in all respects.

This relationship to Rhode Island the Congress does not have the power to change.³³ Each defendant state nonetheless is here proposing through Public Law 31, an "extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, . . ." This they do by their assertion of ownership of the property interests in the marginal sea off the low water mark off their coasts. As already stated, these property interests are estimated to be worth at least \$50 billion.

Nor are these assertions of jurisdiction by the defendants over the recognized sovereignty of the United States cured by a theoretical grant of the same sovereignty and interests in property to Rhode Island and the other maritime states which by a geographic accident front on the Atlantic or Pacific Oceans. The facts are that there are no billions of dollars of natural resources in the form of oil off the shores of Rhode Island or the shores of the other coastal states so far as is now known, and none were known at the time Public Law 31 was enacted. Once this factual frame of reference is accepted, the supposed equality of treatment which Public Law 31 gives to all coastal states is clearly utterly theoretical. "Equal footing" requires the effect of equality of treatment by Congress, not a mere form of verbal equality.

Three of the four defendant states—Louisiana, Florida and Texas—also propose to use Public Law 31 as the vehicle to extend their property interests in the marginal sea farther than the three mile limit. This proposal too carries acquiescence by the defendant individuals. And here not even a pretense is made that Rhode Island is

³³ See *Skiriotes v. Florida*, 313 U. S. 69 (1941); *Cayle v. Smith*, 224 U. S. 559 (1911); *Texas v. White*, 7 Wall. 700 (1868).

to receive even theoretical equality, for Public Law 31 on its face provides that:

"... in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico, ..." (Section 2(b))

The proposals of these three states to extend their boundaries well into the area of the international high seas, if unchallenged, are bound to have a deleterious effect on the economy of Rhode Island. As has been indicated, many of its citizens earn their living in the New England fishing industry which is heavily concentrated off the Grand Banks, well within nine nautical miles of the shores of Newfoundland, Nova Scotia, and New Brunswick. Rhode Island is fearful, and properly so, that such claims under the color of a law passed by the national legislature, will invite retaliatory claims against the New England fishing industry by the Dominion of Canada. Such retaliation might take the form of total exclusion from the area. At best a policy of discriminatory license fees in comparison with national privileges granted to Canadian fishermen may result.

Rhode Island, having surrendered its national rights when it became a member of the original Union, must now look to that Union to protect it by adhering to the long accepted principle of international law that the waters beyond the three mile belt are international and belong to the family of nations. As between nations three miles is the maximum width which any country can properly claim. In *Cunard S. S. Co. v. Mellon*, 262 U. S. 100, 122 (1923), this Court said:

"It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, . . . and a marginal belt of the sea extending

from the coast line outward a marine league, or 3 geographic miles."

The *California* case pointed out that the United States has accepted this rule of international law as part of its conduct of foreign relations. Rhode Island, therefore, as a member of the original Union is so bound and the later admitted defendants are bound also. This national policy on the width of the maritime belt has been historically implemented by the exercise of the treaty power of the United States.³⁴ Indeed, as recently as two months after the passage of Public Law 31 the United States has re-assumed the obligation to support the three mile limit in its Treaty with Japan.³⁵ The assertions of the three defendant states of Florida, Louisiana and Texas that their boundaries extend beyond the three mile belt are, therefore, a violation of international treaties. In the absence of clear statutory repeal of these treaty obligations, Public Law 31 should not be construed to authorize treaty violations by these three states.³⁶

Rhode Island is the smallest of the forty-eight States. It has practically no natural resources. To Rhode Island, therefore, it is of prime importance that its equality with its sister states be preserved intact so that it may honorably hold its place within this Union. Its history shows that its citizens and people once felt strongly that the Constitutional Convention of 1787 violated the Articles of Confederation.³⁷ It is, therefore, sensitive to its convic-

³⁴ See the so-called "liquor" Treaties with Great Britain, 43 Stat. 1761; Germany, 43 Stat. 1815; Panama, 43 Stat. 1875; The Netherlands, 44 Stat. 2013; Cuba, 44 Stat. 2395; and Japan, 46 Stat. 2446.

³⁵ Department of State Bulletin, Vol. XXVIII, No. 725, May 18, 1953, p. 721.

³⁶ *Cook v. United States*, 288 U. S. 102 (1933).

³⁷ Perhaps a compelling reason for Rhode Island's delay in ratifying the Constitution was the feeling widespread among its citizenry that the Constitutional Convention of 1787 did not follow the Articles of Confederation. That Document, proposed on No-

tion that it must guard its rights under the Constitution so that it may maintain its equality with the defendant states. Public Law 31 is in essence a denial of that equality and is, further, an invasion by Congress of the field of judicial power in a legislative attempt to reverse the Constitutional decisions of this Court which protect that equality.

September 15, 1777, and adopted several years later, described itself in the following words: "Articles of Confederation and perpetual Union between states of (and then named the thirteen original states).

Article 2 said in part: "Each state retains its sovereignty, freedom and independence and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in Congress assembled." Article 5, Clause 2, stated: "No state shall be represented in Congress by less than two nor more than seven members . . ." Article 5, Clause 4 was in these words: "In determining questions in the United States in Congress assembled, each state shall have one vote." Article 13 stated: ". . . and the Articles of this Confederation shall be inviolably observed by every state; and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislature of each state."

The convention of the colonies presented their finished Constitution on September 17, 1787. All the states but Rhode Island were represented. The submission resolution read in part: ". . . That it is the opinion of this convention that as soon as the convention of nine states shall have ratified this constitution, the United States in Congress assembled should fix a day on which elections should be appointed by the states which shall have ratified the same . . ." to elect a president "and the time and place for commencing proceedings under this constitution." This was done in New York in April, 1789. The constitutional senators and representatives met there on the 6th of that month. The senate convened for the special purpose of opening and counting the electoral votes and announced Washington's unanimous election. Charles Thomson, the Secretary of the Continental Congress, was dispatched with the official notice which he delivered to the President-Elect at Mount Vernon on April 14th. Washington was sworn in New York and the Continental Congress adjourned *sine die*.

Since Rhode Island was not represented at the convention, there was in that state a considerable body of opinion that the adoption of the Constitution by nine states only was a violation of Article 13 of the Articles of Confederation.

V.

The suit of Rhode Island is not a suit against the United States.

The individual defendants in this suit, all Federal officials acting under color of authority of Public Law 31, will, unless restrained by this Court, deprive Rhode Island of its rightful portion of the sum of \$62 million now held by them or under their control and will acquiesce in the unconstitutional assertions of the defendant states.

Such actions are beyond the powers of these officers and are, therefore, not the conduct of the sovereign, the United States.³⁸ Such actions violate the Constitution, and hence do not enjoy the lawful authority of the sovereign. They may, therefore, be enjoined.³⁹

CONCLUSION.

Wherefore, it is respectfully submitted that motion for leave to file this complaint be granted and that, upon hearing, the relief prayed for in the complaint be granted.

Respectfully submitted,

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³⁸ *Larson v. Domestic and Foreign Corp.*, 337 U. S. 682, 690 (1949).

³⁹ *Philadelphia Co. v. Stimson*, 223 U. S. 605, 620 (1912); See *Georgia R. Co. v. Redwine*, 342 U. S. 299, 304 (1952).

APPENDIX A.

PUBLIC LAW 31, 83D CONGRESS, 1ST SESSION, C. 65

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act."

TITLE I.

DEFINITION.

SEC. 2. When used in this Act—

(a) The term "lands beneath navigable waters" means—

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or

the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however,* That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

TITLE II.

LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES.

SEC. 3. RIGHTS OF THE STATES.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them of this Act, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its

terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however, That*, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: *Provided, however, That* within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;

(d) Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the produc-

tion of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

(e) Nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

SEC. 4. SEAWARD BOUNDARIES.—The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

SEC. 5. EXCEPTIONS FROM OPERATION OF SECTION 3 OF THIS ACT.—There is excepted from the operation of section 3 of this Act—

(a) all tracts or parcels or land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which

the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.

SEC. 6. POWERS RETAINED BY THE UNITED STATES.—(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

SEC. 7. Nothing in this Act shall be deemed to amend, modify, or repeal the Acts of July 26, 1966 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377).

June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amendatory thereof or supplementary thereto.

Sec. 38. Nothing contained in this Act shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however,* That nothing contained in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this Act, or authorizes or compels the granting of such rights in such lands; and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this Act.

SEC. 9. Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

SEC. 10. Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve", is hereby revoked insofar as it applies to any lands beneath navigable waters as defined in section 2 hereof.

SEC. 11. SEPARABILITY.—If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby; without limiting the generality of the foregoing, if subsection 3 (a), 1, 3 (a) 2, 3 (b) 1, 3 (b) 2, 3 (b) 3, or 3 (c) or any provision of any of those subsections is held invalid, such subsection or provision shall be held separable and the remaining subsections and provisions shall not be affected thereby.

RELEVANT PORTIONS OF THE ACTS OF CONGRESS ADMITTING THE STATES OF ALABAMA, LOUISIANA, FLORIDA, TEXAS AND CALIFORNIA TO THE UNION.

Alabama Act of March 2, 1819, c. 47, 3 Stat. 489):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the inhabitants of the territory of Alabama be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and that the said territory, when formed into a state, shall be admitted into the union, upon the same footing with the original states, in all respects whatever.

Louisiana (Act of April 8, 1812, c. 50, 2 Stat. 701):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana:

Florida (Act of March 3, 1845, c. 48, 5 Stat. 742):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

Texas (Joint Resolution No. 8 of March 1, 1845, 5 Stat. 797):

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the ces-

sion of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States:

California (Act of September 9, 1850, c. 50, 9 Stat. 452):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

LEGISLATIVE ACTS SETTING FORTH BOUNDRY CLAIMS OF TEXAS AND LOUISIANA AND CONSTITUTIONAL PROVISION SETTING FORTH BOUNDARY CLAIM OF FLORIDA.

TEXAS.

Act of May 16, 1941, L. Texas, 47th Leg., p. 454.

Boundary Statute—*General and Special Laws of Texas*, 47th Legislature, Regular Session, 1941, page 454:

Be it enacted by the Legislature of the State of Texas:

“Section 1. That the gulfward boundary of the State of Texas is hereby fixed and declared to be a line located in the Gulf of Mexico parallel to the three (3) mile limit, as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four (24) marine miles further out in the Gulf of Mexico than the said three (3) mile limit.

“Section 2. That, subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Texas has full sovereignty over all the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Texas, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Texas, as herein fixed.

"Sec. 3. That the State of Texas owns, in full and complete ownership, the waters of the Gulf of Mexico and of the arms of the said Gulf, and the beds and shores of the Gulf of Mexico; and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms, either at low tide or high tide, within the boundaries of Texas, as herein fixed; and that all of said lands are set apart and granted to the Permanent Public Free School Fund of the State, and shall be held for the benefit of the Public Free School Fund of this State according to the provisions of law governing the same.

"Sec. 4. That this Act shall never be construed as containing a relinquishment by the State of Texas of any dominion sovereignty, territory, property or rights that the State of Texas already had before the passage of this Act.

"Sec. 5. The fact that the land included within the boundaries hereinabove fixed belongs to the Permanent Public Free School Fund of this State, and that the same is believed to be oil bearing land, and that the development of same in accordance with the provisions of law governing the sale or lease of minerals belonging to said Permanent Free School Fund is a major duty of the Legislature, and requires prompt and immediate attention, creates an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be, and the same is hereby suspended, and that this Act take effect and be in full force from and after its passage, and it is so enacted."

Approved May 16, 1941.

Act of May 23, 1947, L. Texas, 50th Leg., p. 451.

"Be it enacted by the Legislature of the State of Texas:

Section 1. That Section 1 of Senate Bill No. 130, Chapter 286, Act of the 47th Legislature, be and the same is hereby amended so as to hereafter read as follows:

'Section 1. The Gulfward boundary of the State of Texas is hereby fixed and declared to be a line beginning in the Gulf of Mexico at the mouth of the Sabine River; thence on a grid bearing S. 35 degrees 55 minutes and 22 seconds

E. to the farthestmost edge of the continental shelf from the Gulf Shore line; thence in a Westerly and Southerly direction with the edge of the continental shelf to a point opposite the mouth of the Rio Grande River; thence to the mouth of the Rio Grand River.'

Sec. 2. The fact that the land included within the boundaries hereinabove fixed belongs to the Permanent Public Free School Fund of this state, and the state has never by statute embraced all of same within the boundary of Texas, and that the same is believed to be oil bearing land, and that the development of same in accordance with the provisions of law governing the sale or lease of minerals belonging to said Permanent Free School Fund is a major duty of the Legislature, and requires prompt and immediate attention, creates an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be, and the same is hereby suspended, and that this Act take effect and be in full force from and after its passage, and it is so enacted."

Approved May 23, 1947.

LOUISIANA.

Louisiana Revised Statutes 1950, Title 49, Sections 1 and 2:

"§ 1. Gulfward boundary.

The gulfward boundary of the state is a line located in the Gulf of Mexico parallel to the three-mile limit as determined according to international law, and is located twenty-four marine miles further out in the Gulf than the three-mile limit.

"§ 8. Sovereignty over waters within boundaries.

Subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Louisiana has full sovereignty over all of the waters of the Gulf of Mexico and of the arms of the Gulf

of Mexico within the boundaries of Louisiana, and over the beds and shores of the Gulf and all arms of the Gulf within the boundaries of Louisiana."

FLORIDA.

Constitution of State of Florida 1868—Article I.

"State boundaries.—The boundaries of the State of Florida shall be as follows. Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning."

APPENDIX B.

The History of Article IV, Section 3, Clause 2 at the Constitutional Convention of 1787.

The original proposals with respect to the powers of Congress did not include any power to dispose of "property". Thus, it is of interest that no such power is referred to in Article I, Section 8, where the various powers of Congress are enumerated. Instead, the "property clause" appears in Article IV, Section 3, as a separate paragraph immediately following the paragraph relating to the manner in which new States are to be admitted into the Union. Such discussion as there was of this subject at the Constitutional Convention seems to make it clear that:

1. The provision with respect to the admission of new States was directed primarily to the future admission of States located in the area then known as the Northwest Territory.

2. Some of the original thirteen states claimed parts of this territory, and there were conflicting claims both as to the rights of the United States vis-a-vis some of the individual States, and as to the rights of some of the individual States vis-a-vis one another.

3. To deal with this situation, it was proposed that a procedure be set up for admitting new States into the Union—and as a directly related corollary, it was proposed that the Congress be given power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States". Because of the then existing controversy over "who owned what", Article IV, Section 3 went on to provide that:

"Nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."

. . .

In all probability, no one would seriously argue that the language of Article IV, Section 3, Clause 1, relating to the admission of new states to the Union, would authorize the Congress to admit a state which was wholly "at sea"—that is, a state which was wholly in the "tidelands". By show-

ing the interrelation between Clause 1 and Clause 2 of Article IV, Section 3, it becomes clear that the Constitutional Convention, in its references to "territory or other property belonging to the United States", had reference only to "territory or other property" of the same general type as that which the Founding Fathers had in mind in their provision respecting the admission of new states—that is, territory or property such as that which was located in the Northwest Territory.

The following passages from Farrand, the Records of the Federal Convention, bear on this matter:

In Volume II, at page 321, (The Journal of the Convention for Saturday, August 18, 1787) appears the first reference to the provision which is now Article IV, Section 3, Clause 2. (This passage reads as follows:

"The following additional powers proposed to be vested in the legislature of the United States . . .

to dispose of the unappropriated lands of the United States.")

Later in August of 1787 this language was revised, and substantially the same language that now appears in Article IV, Section 3, Clause 2 was first presented to the Constitutional Convention on August 30, 1787. This appears in Farrand, Volume II, at page 458, as follows:

"It was moved and seconded to agree to the following proposition: 'Nothing in this Constitution shall be construed to alter the claims of the United States or of the individual States to the Western territory . . .'

"It was then moved and seconded to postpone the last proposition to take up the following: 'The legislature shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution contained shall be so construed as to prejudice any claims either of the United States or of any particular State.' "

This language was adopted by the Convention on August 30. Farrand, Volume II, page 459.

A general discussion of this provision, both in terms of the admission of the new States and in terms of the "the right of the United States to back lands", took place on

August 30. See Madison's Journal, Farrand, Volume II, page 466. (Maryland was the only state that opposed Article IV, Section 3—its opposition being based on its own claim with respect to the western lands). See McHenry's Notes, Farrand, Volume II, page 470.

The Committee of Style, in its revision of the language of the Constitution, left the language quoted above intact. (This language was Article XVII of the draft of the Constitution, at that time. See Farrand, Volume II, page 578).

From other material which appears in the various appendices to Farrand, it appears that the language of Article IV, Section 3, was drafted by Gouveneur Morris. See his letter of December 4, 1803, to Henry W. Livingston, as quoted in Farrand, Volume III, page 404, where, addressing himself to the admission of new States to the Union, in response to an inquiry from Livingston, he said:

"Your inquiry . . . is substantially whether Congress can admit, as a new State, territory which did not belong to the United States when the Constitution was made. In my opinion, they can not. I always thought that, when we should acquire Canada and Louisiana, it would be proper to govern them as provinces In wording the third section of the fourth Article I went as far as circumstances would permit to establish the exclusion."

APPENDIX C.

The History of Article IV, Section 3, Clause 2, and Related Matters, at the Virginia Convention of 1788—the Convention which Ratified the Federal Constitution.

At the Virginia Convention, which was held in 1788, just a few months after the Constitutional Convention in Philadelphia had completed its work, there were present some of the best thinkers in any of the thirteen States. Among the leaders were John Marshall, later to be Chief Justice of the United States; James Madison, the father of the Constitution; Governor Randolph of Virginia; Patrick Henry; and many others. For a general discussion of the high level of the debate at this Convention, see Beveridge's *Life of John Marshall*, Vol. 1, Chapters IX-XII. And see especially pages 322-3, where Beveridge makes the following categorical statement:

"The debates in the Virginia Convention of 1788 are the only masterful discussions on *both* sides of the controversy [over whether or not to ratify the Constitution] that ever took place. . . . The Virginia contest was the only real *debate* over the whole Constitution."

Accordingly, statements that were made at the Virginia Convention of 1788 are extremely important, in terms of the "legislative history" of the Constitution—practically as important as, and in some cases even more important than, the statements that were made a few months earlier, in 1787, at the Constitutional Convention itself.

In addition, as already noted above, the Virginia Convention brought together many of the best thinkers of the time—James Madison, John Marshall, etc.—so what was said at the Virginia Convention takes on even greater significance. In this respect, the debates at the Virginia Convention can be compared in significance to the *Federalist* papers.

By fortunate circumstance, at the Virginia Convention there was an extensive discussion of possible "give-aways" of federal "property". The specific matter under discussion was the possible "give-away", to Spain, of navigation rights on the Mississippi. Madison stated flatly that, under the Constitution, the Federal Government would have no power to effect such a give-away, even by a treaty bearing the concurrence of two-thirds of the Senate. Governor

Randolph said that such a give-away was specifically prohibited by Article IV, Section 3, clause 2, of the Constitution—and in this connection he quoted the final sentence of clause 2, which reads as follows:

“Nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular state.”

Governor Randolph said that the give-away of navigation rights on the Mississippi would prejudice a right of the State of Virginia, in direct violation of this provision of the Constitution.

It is this discussion that is reflected by the material that is set out in the attached pages. Particular mention should be made of the quotations from James Madison at pages 246 and 247 of the Journal of the Virginia Convention, the quotation from John Marshall at page 299, and the quotation from Governor Randolph at page 258, all of which are set out in detail below.

All page numbers are taken from the published stenographic transcript of the 1788 Convention, as compiled by a shorthand reporter by the name of Robertson. Elliott's *Debates*, which reprints much of this material, is not nearly as complete as Robertson. Robertson's notes, taken down in 1788, were printed in Virginia in 1805. (See Beveridge, *op. cit. supra*).

It is the material from Robertson's transcript, as referred to above, which is quoted and paraphrased in the pages that follow.

Robertson's complete transcript consists of approximately four hundred and eighty pages of verbatim and paraphrased debates at the Virginia Convention of June, 1788—a Convention which was called for the express purpose of ratifying or rejecting the Federal Constitution, as proposed at the Constitutional Convention held in Philadelphia in 1787.

At pages one through ten of the volume, there is set out the full text of the Constitution itself, with the signatures of all the signers.

At pages ten and eleven, over the signature of George Washington, President of the 1787 Convention, there is set out the Resolution with respect to the transmission of the Constitution to the thirteen states, for ratification or rejection by them, with the proviso that the Constitution shall take effect upon ratification by nine of the states.

At pages eleven and twelve, over the signature of George Washington, as President of the 1787 Convention, there is a letter transmitting the Constitution to the several states. Among other things, this letter of transmittal from George Washington states: "The friends of our country have long seen and desired, that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union . . ." (Journal of the Virginia Convention, page 11).

Following this letter from General Washington, the volume contains the debates of the Virginia Convention, which opened in the first week day of June, 1788. On the opening day it was agreed "that the rules and orders for conducting business in the House of Delegates, so far as the same may be applicable to the Convention, be observed therein." (Page 15).

It was then proposed by Mr. George Mason, and concurred in by Mr. Madison, that the Constitution should be reviewed by the Convention, "Clause by clause" (Page 15).

Mr. Mason offered a specific resolution to this effect, as follows: "That no question, general or particular, shall be propounded in this Convention, upon the proposed Constitution of Government for the United States, or upon any clause or article thereof, until the said Constitution shall have been discussed, clause by clause, through all its parts."

This Resolution "was agreed to by the Convention, unanimously." (Page 15).

The following day, June 4, 1788, the Convention began to address itself to substantive matters. The discussion of Article I, Sections One and Two, begins in the Journal at page 18, and continues at great length. The subsequent articles and sections are then taken up in the order that they bear in the Constitution itself—except that the very general discussion of Article I frequently included discussion of the other articles and sections.

With the foregoing as preamble, the specific excerpts of present interest are as follows:

Mr. John Marshall, at page 163: "Mr. Chairman—I conceive that the object of the discussion now before us, is, whether democracy, or despotism, be most eligible. I

am sure that those who frame the system submitted to our investigation, and those who now support it, intend the establishment and security of the former. . . . [Patrick Henry] told us, that the principal danger arose, from a government, which is [this Constitution be] adopted, would give away the Mississippi. I intended to proceed regularly, by appending to the clause under debate, but I must reply to some observations which were dealt upon [by Patrick Henry], to make impressions on our minds unfavorable to the plan upon the table. Have we no navigation in, or do we derive no benefit from, the Mississippi? How shall we attain it? By retaining that weak government which has hitherto kept it from us? Is it thus that we shall secure that navigation? Give the government the power of retaining it, and then we may hope to derive actual advantages from it." These remarks by John Marshall were addressed to Patrick Henry's contentions that the Federal Government, if the Constitution were to be adopted, would be likely to give away navigation rights on the Mississippi to Spain. A proposal to this effect had been pending for some time, under the Articles of Confederation, and Patrick Henry and a number of the other delegates to the Convention expressed the view that a new Constitution would strengthen the hands of those who wished to give away these navigation rights to Spain. It is clear from the debates at the Virginia Convention that all of the delegates who spoke on this subject were opposed to giving away these navigation rights to Spain—and that there was a considerable volume of discussion on whether or not the Federal Government, if the Constitution were to be adopted, would have the power to give away these rights. The reason why this debate took place was as follows: Kentucky, which was not then a state, had 14 delegates at the Virginia Convention. It was known that the votes of these 14 delegates might well determine the outcome of the Convention. (The final vote, after three weeks of debate, was 89 for ratification, 79 opposed.) Accordingly, the highly emotional issue of the proposed give-away of navigation rights on the Mississippi was a central issue in the debates, because of its possible effect on the votes of the Kentuckians. See Beveridge, *op. cit. supra*.

John Marshall, at page 165, "The Senate, with the President, he [Patrick Henry] informs us, may make a treaty which shall be disadvantageous to us—and that if they be not good men, it will not be a good Constitution. I shall

ask the worthy member only, if the people at large, and they only, ought to make laws and treaties? Has any man this in contemplation? You cannot exercise the powers of government personally yourselves."

John Marshall, at page 166, "What are the objects of the National Government? To protect the United States, and to promote the general welfare. Protection in time of war is one of its principal objects. Until mankind shall cease to have ambition and avarice, wars will arise. The prosperity and happiness of the people depend on the performance of these great and important duties of the general government. Can these duties be performed by one state? Can one state protect us, and promote our happiness? The honorable gentleman who has gone before me [Governor Randolph] has shown that Virginia cannot do those things. How can they be done? By the National Government only."

Mr. James Madison, at pages 188-9: "The powers of the General Government relate to external objects, and are but few Let us observe also, that the powers in the General Government are those which will be exercised mostly in time of war, while those of the state governments will be exercised in time of peace. . . . All agree that the General Government ought to have power for the regulation of commerce. . . . When general powers will be vested in the General Government, there will be after that mutability which is seen in the legislation of the states."

Mr. George Mason at page 195 (in connection with a general discussion of the possible grant to Spain of navigation rights on the Mississippi, from which flowed some reference to navigation rights on the "Potowmack") "Maryland, says the gentleman, has a right to the navigation of the Potowmack. This is a right which she never exercised. Maryland was pleased with what she had in return for a right which she never exercised. Every ship which comes within the State of Maryland, except some small boats, must come within our country [i.e., Virginia] . . . the back lands, he says [i.e., Governor Randolph says] is another source of danger. Another day will show, that if that Constitution is adopted without amendments, there are twenty thousand families of good citizens in the north-west District, between the Allegany mountains and the Blue Ridge, who will run the risk of being driven from their lands. They will be ousted from them by the Indiana Company—by the survivors, although their rights and titles have been confirmed by the Assembly of our own State."

(With further reference to the navigation of the Mississippi)—Mr. Lee of Westmoreland, at page 238—"Mr. Lee of Westmoreland, then in a short speech related several Congressional transactions respecting that river, and strongly asserted, that it was the unflexible and determined resolution of Congress never to give it up. That the Secretary of Foreign Affairs, who was authorized to form a treaty with Gardoqui, the Spanish Ambassador, had positive directions not to attempt to give up that navigation, and that it never had been their intention or wish to relinquish it. That on the contrary, they earnestly wished to adopt the best possible plan of securing it. After some desultory conversation, Mr. Monroe spoke as follows: "Mr. Chairman—my conduct respecting the transactions of Congress, upon this interesting subject, since my return to the States, has been well known to many worthy gentlemen here. . . . The policy of this State respecting this river has always been the same. It has contemplated but one object, the opening it for the use of the inhabitants, whose interests depended on it . . . If I recollect aright at this moment, the Minister of the United States at the Court of Madrid [during the war] informed Congress of the difficulty he found in prevailing upon that Court to acknowledge our independence, or take any measure in our favor, suggested the jealousy with which it viewed our settlements in the western country, and the probability of better success, provided we would cede the navigation of this river, as the consideration. . . . A resolution passed [the Congress during the war] to that effect . . . But what was the issue of this proposition? Was any treaty made with Spain that obtained an acknowledgement of our independence, although at war with Great Britain, and such acknowledgement would have cost her nothing? . . . So soon as the war ended, this resolution was rescinded. The power to make such a treaty was revoked. . . . After the peace, it became the business of Congress to investigate the relation of these states to the different powers of the earth, in a more extensive view than they had hitherto done, and particularly in the commercial line; and to make arrangements for entering into treaties with them on such terms as might be mutually beneficial for each party. As the result of the deliberations of that day, it was resolved, 'That commercial treaties be formed, if possible, with said powers, those of Europe in particular, Spain included, upon similar prin-

ciples, and three commissioners, Mr. Adams, Mr. Franklin, and Mr. Jefferson, be appointed for that purpose.' So that an arrangement for a treaty of commerce with Spain had already been taken. Whilst these powers were in force, a representative from Spain arrived, authorized to treat with the United States, on the interfering claims of the two nations, respecting the Mississippi, and the boundaries and other concerns wherein they were respectively interested. A similar commission was given to the Honorable the Secretary of Foreign Affairs, on the part of the United States, with these ultimata, 'that he enter into no treaty, contract, or convention whatever, with the said representative of Spain, which did not stipulate our right to the navigation of the Mississippi, and the boundaries as established in our treaty with Great Britain.'—and thus the late negotiation commenced, and under auspices, as I supposed, very favorable to the wishes of the United States; for Spain had become sensible of the propriety of cultivating the friendship of these States. Knowing our claim to the navigation of this river, she had sent a minister hither principally to treat on that point."

James Monroe, at page 241—still discussing the proposed treaty with Spain—"By the articles of Confederation, nine states are necessary to enter into treaties. The instruction [to the Secretary of Foreign Affairs] is the foundation of the treaty . . . the instructions under which our commercial treaties have been made were carried by nine states. Those under which the Secretary now acted were passed by nine states. . . . The Secretary, Mr. Jay, being at length called before Congress to explain the difficulties [encountered in his negotiations with Spain] presented to their view the project of a treaty of commerce, containing, as he supposed, advantageous stipulations in our favor, in that line; in consideration for which we were to contract or forbear the use of the navigation of the River Mississippi for the term of twenty-five or thirty years, and earnestly advised our adopting it. . . . The Honorable Secretary urged that it was necessary to stand well with Spain; that the commercial project was a beneficial one, and should not be neglected; that a stipulation to forbear the use contained an acknowledgment, on her part, of the right in the United States; that we were in no condition to take the river, and therefore gave nothing for it. . . . We differed with the Honorable Secretary, almost in every respect. We admitted indeed the propriety of

standing well with Spain, but supposed we might accomplish that end at least on equal terms. We considered the stipulation to forbear the use, as a species of barter, that should never be countenanced in the council of the American States, since it might tend to the destruction of the society itself; for a forbearance of the use of one river, might lead into more extensive consequences—to that of the Chesapeake, the Potowmack, or any other of the rivers that emptied into it."

Mr. James Madison, at page 246: "I readily confess that neither the old confederation, nor the new Constitution, involves a right to give the navigation of the Mississippi. It is repugnant to the law of nations. I have always thought and said so. Although the right be denied, there may be emergencies which will make it necessary to make a sacrifice. But there is a material difference between emergencies of safety in time of war, and those which may relate to mere commercial regulations. You might on solid grounds deny, in time of peace, what you give up in time of war."

Mr. James Madison, at page 247: "There were seven states who thought it right to give up the navigation of the Mississippi for twenty-five years . . . but they had no idea of absolutely alienating it. . . . The temporary cession, it was supposed, would fix the permanent right in our favor, and prevent that dangerous coalition [between Great Britain and Spain, which was regarded as a possibility at the time]".

Mr. James Madison, at page 247—still discussing the proposed cession of navigation rights on the Mississippi—"New Jersey . . . gave instructions to her delegates to oppose it. And what was the ground of this? I do not know the extent and particular reasons of her instructions. *But I recollect, that a material consideration was, that the cession of that river would diminish the value of the western country, which was a common fund for the United States, and would consequently tend to impoverish their public treasury. These, Sir, were rational grounds.*" (Emphasis added). (In this general connection, it should be noted that all of the speakers took it for granted that the proposed cession, even though it was only for a term of years, could be accomplished, if at all, only by the treaty process—which, under the Articles of Confederation, required the approval of nine of the states. The discussion

also makes it clear that all persons who took part in the discussion, both those who favored the Constitution and those who opposed it, recognized that the proposed cession of navigation rights on the Mississippi could only take place, under the Constitution, via the treaty route—which would require the concurrence of the President and two-thirds of the Senate, under the Constitution itself.)

James Madison, at page 247: "Give me leave, Sir, as I am upon this subject, and as the honorable gentleman has raised a question, whether it be not more secure under the old than the new Constitution—to differ from him. I shall enter into the reasoning, which, in my mind, renders it more secure under the new system—two-thirds of the Senators present, (which will be nine states, if all attend to their duties) and the President must concur in every treaty which can be made. Here are two distinct and independent branches, which must agree to every treaty. . . . I own that as far as I have any rights, which are but trivial, I would rather trust them to the new than the old government."

Mr. Grayson, at page 249: "With respect to the Mississippi and back lands, the eastern states are willing to relinquish their great and essential right . . . But, says the honorable gentleman [Madison], there is a great difference between actually giving it up altogether, and a temporary cession.—[But the practical question is:] If the right was given up for twenty-five years, would this country be able to avail herself of her right, and resume it at the expiration of that period? . . . We never could wrest it [back] from the House of Bourbon, the branches of which always support each other."

Mr. Grayson, at page 250: "But we are told . . . that this high act of authority (i.e., the proposed give-away to Spain of navigation rights on the Mississippi) cannot, by the law of nations, be warrantable, and that this great right cannot be given up.—I think so also.—But how will the doctrine play to America?—After it is actually given away, can it be reclaimed? If nine states give it away, what will the Kentucky people do? . . . Should Congress make a treaty to yield the Mississippi, that people [i.e., the Kentucky people] will find no redress in the law of nations."

Governor Randolph of Virginia, at page 257—"That the people of Kentucky have an unequivocal right to the navigation of the Mississippi, by the law of nature and nations,

is clear and undoubted . . . [but] there was a dispute respecting the right of Great Britain to that river, and the United States can only have the same right which the original possessor had, from whom it was transferred. [However] I am willing to declare that the right is complete . . . [But] upon the most liberal interpretation, it [the treaty of peace with Great Britain] would never give the inhabitants a right to pass through the middle of New Orleans . . . [The real question is] whether the power of treaties be improper to be given or not to the General Government . . . It will moreover be contrary to the law of nations to relinquish territorial rights. To make a treaty to alienate any part of the United States, will amount to a declaration of war against the inhabitants of the alienated part . . . Are not the states interested in the back lands, as has been repeatedly observed?"

(This next quotation is probably the most important of the lot)

Governor Randolph of Virginia, at page 258: "The gentleman wishes us to show him a clause which shall preclude Congress from giving away this right. It is first incumbent upon him to show where the right is given up. There is a prohibition naturally resulting from the nature of things, it being contradictory and repugnant to reason, and the law of nature and nations, to yield the most valuable right of a community, for the exclusive benefit of one particular part. But there is an expression which clearly precludes the General Government from ceding the navigation of this river. In the 2d clause of the 3d section of the 4th Article, Congress is empowered: "to dispose of, and make all *needful* rules and regulations respecting the *territory* or *other property* belonging to the United States." But it goes on and provides, that "*nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.*" Is this a claim of the particular State of Virginia? If it be, there is no authority in this Constitution to prejudice it." (Emphasis in original).

Governor Randolph, at page 248: "But it has been said, that there is no restriction with respect to making treaties. The various contingencies which may form the object of treaties, are in the nature of things, incapable of definition. The government ought to have a power to provide every contingency. The territorial rights of the states are sufficiently guarded by the provision just recited."

Governor Randolph of Virginia, still discussing this subject at page 259, commented on the fact that the right of navigation on the Mississippi was discussed at great length because delegates from Kentucky were present at the Convention, and the various arguments and counterarguments that were being made concerning the Mississippi constituted, in Governor Randolph's words, a "scuffle" for the votes and good will of these delegates.

Governor Randolph, at page 259: "I contend that *there is no power given the General Government, to surrender that navigation.* There is a positive prohibition in the words [of Article 4, clause 2, Section 3] I have just mentioned." (Emphasis added).

John Marshall, at page 299: "What government is able to protect you in time of war? Will any state depend on its own exertions? The consequence of such dependence and withholding this power (to raise and support armies, provide for the common defense, etc.) from Congress will be, that state will fall after state, and be a sacrifice to the want of power in the General Government.) *United we are strong, divided we fall.*" (Emphasis in original).

Discussion of Article 4, Section 2, on the admission of new states, at page 418: Mr. Grayson—"Mr. Chairman—it appears to me, Sir, under this section, there never can be a southern state admitted into the Union. There are seven states, who are a majority, and whose interest is to prevent it: the balance being actually in their possession, they will have the regulation of commerce, and the Federal ten-mile square wherever they please. It is not to be supposed then, that they will admit any southern state into the Union, so as to lose that majority. Mr. Madison replied, that he thought this part of the plan more favorable to the southern states than the present Confederation, as there was a greater chance of new states being admitted."

Mr. Grayson—"Mr. Chairman—Gentlemen have misrepresented what I said on the subject of treaties. On this ground, let us appeal to the law of nations. How does it stand? Thus—that without the consent of the National Legislature dismemberment cannot be made. This is a subject in which Virginia is deeply interested, and ought to be well understood. It ought to be expressly provided, that no dismemberment should take place without the consent of the Legislature . . . How is it with Virginia. . . she will pay more than her natural proportion, and the

present state of the national debt renders it an object. She will also lose her importance. She is now put in the same situation as a state forty times smaller. Does she gain any advantage from her central situation, by acceding to that paper? Within ten miles of Alexandria, the center of the States is said to be. It has not said, that the ten-mile square will be there. In a monarchy the seat of government must be where the monarch pleases. How ought it to be in a republic like ours? . . . I lay it down as a political right, that the seat of government ought to be fixed by the Constitution, so as to suit public convenience. Has Virginia any gain from her riches and commerce? What does she get in return? I can see what she gives up, which is immense. The little states gain in proportion as we lose."

Mr. Madison, at page 444: "It was said, and I believe with truth, that every part of America does not stand in equal need of security. It was observed, that the northern states were most competent to their own safety. Was it reasonable, as today, that they should bind themselves to the defense of the southern states; and still be left at the mercy of the minority for commercial advantages? (Madison then recites the various arguments made by those who opposed the Constitution, and some of the arguments of those who had opposed the Articles of Confederation as well). The case of Maryland, instanced by the gentleman, does not hold. She would not agree to confederate, because the other states would not assent to her claims on the western lands. Was she gratified? No—she put herself like the rest. Nor has she since been gratified. The lands are in the common stock of the Union."

Finally, after all of the discussion referred to above and much more besides, the "main question" was put to the Convention—that is, whether or not the Convention "do agree" with the Constitution—the vote was eighty-nine ayes, and seventy-nine noes. Among those voting aye were: The Honorable Edmund Pendleton, President of the Convention; James Taylor; William Mason; His Excellency Governor Randolph; John Marshall; Robert Breckenridge; James Webb; James Taylor (of Norfolk); James Taylor (of Carolina); James Madison; Henry Lee (of Westmoreland); Bushrod Washington, and a number of others.

Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

REPLY BRIEF FOR COMPLAINANT.

The State of Rhode Island files this reply brief in order to emphasize the critical factors which give it standing to bring this suit because these factors have obviously been misconceived and misunderstood by the defendants in their briefs.

What the complainant states object to is the assertion by the defendant states of power over areas and resources which this Court has declared to be inseparably entwined with national interests, national responsibilities and national concerns. The defendant states, in the words of this Court in *United States v. California*, 332 U.S. 19, 35-36, are "not equipped in our constitutional system with the

powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which [they] seek." And because the defendant states lack the constitutional power to assume jurisdiction over the areas and resources purported to be granted them by Public Law 31, the complainant states as equal or joint members of the Union have standing to object when injury to them results from the exercise of such jurisdiction. They then have standing to insist that the vital functions of the national government, which are functions necessarily exercised in the interests of all the states, not be performed by any one state to the detriment of other states.

It is this concept of illegal assertion of state power over national interests that lies at the heart of the complaints filed by Rhode Island and Alabama. And because the defendants have misunderstood the nature of that concept, this brief is addressed to a necessary elaboration thereof.

1. The Justiciable Nature of the Controversy.

At the outset the Court should take note that most importantly among acts done and threatened to be done by the defendant states against which Rhode Island complains, are acts the same or essentially similar to those acts which this Court held to be unlawful and beyond the legal powers of the defendant states in *United States v. California*, 332 U.S. 19; *United States v. Louisiana*, 339 U.S. 699; and *United States v. Texas*, 339 U.S. 707. This is clearly seen by reference to paragraphs IX, XI, XIII, and XV, and paragraphs XIX, XXI, XXIII and XXV of the Rhode Island complaint.

In the off-shore oil cases referred to, this Court held that complaints of the federal government against the same acts of the defendant states as those against which Rhode Island now complains, raised not abstract or hypothetical political questions, but a concrete conflict of legal rights and interests which presented a case and controversy

appropriate for decision by this Court.¹ And this Court held that the acts complained of gave grounds for injunctive relief and a declaration that the defendant states had no title or property interest in the lands, minerals or other things lying outside of inland waters and seaward of the ordinary low-water mark. These decisions were by a divided Court, but they now represent the law of the land and it may be assumed that they would not be overruled *sub silentio* or without full argument.

It should, moreover, be pointed out that there are additional allegations in the Rhode Island and Alabama complaints that some of the defendant states are claiming seaward boundaries beyond the three-mile limit traditionally asserted by the United States in its international relations to the detriment of the complainant states. These allegations corroborate the essential soundness of the federal government's contention as stated by this Court in the *California* off-shore oil case that "proper exercise of these constitutional responsibilities (of the federal government in the international field) requires that it have power; unencumbered by state commitments, always to determine what agreements will be made concerning the control and use of the marginal seas and the land under it." (332 U.S. 19, 29) As Justice Black stated, "Not only has acquisition, as it were, of the three-mile belt been accomplished by the national government, but protection and control of it has been a function of national external sovereignty. * * *

¹ "The difference involves the conflicting claims of federal and state officials as to which government, state or federal, has a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land, much of which has already been, and more of which is about to be, taken by or under authority of the state. Such concrete conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences which can only be settled by agreement, arbitration, force, or judicial action The justiciability of this controversy rests therefore on conflicting claims of alleged invasions of interests in property and on conflicting claims of governmental powers to authorize its use." *United States v. California*, 332 U.S. 19, 25.

What this government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar obligations. See *United States v. Belmont*, 301 U.S. 324, 331-332. The very oil about which the state and the nation here contend might well become the subject of international dispute and settlement. * * * *The state is not equipped in our constitutional system with the powers or facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks.*" (332 U.S. 19, 34-36) (emphasis added).

But the point which bears emphasis here is the essential similarity between the acts of the defendant states of which Rhode Island complains and those which the federal government complained of in the off-shore oil cases. In the earlier off-shore oil cases the federal government was complaining that the acts of the defendant states infringed the rights of the federal government. In the instant cases Rhode Island and Alabama complain that these same acts also infringe their rights as quasi-sovereign states. These acts constitute an invasion of a field which under the Constitution the states are debarred from entering not only because of the rights of the federal government to occupy the field, but because of the rights of the states *inter sese* to have the field free from the interference of sister states. If these acts of the defendant states created a justiciable issue as to the United States they most certainly create such an issue as to Rhode Island and Alabama. The only difference concerns the standing of these two states to raise this justiciable issue before this Court.

2. The Substantiality of the Controversy.

Thus there is clearly a controversy justiciable in character here. The other points on which the complainants must satisfy the Court to obtain leave to institute the suits are (1) the standing and interest of Rhode Island

and Alabama to bring these suits, and (2) the substantiality of the issues which they raise that these unlawful acts and threats of the defendant states have not been validated and made lawful by any acts within the constitutional authority of the federal government. It is the complainants' contention that under the Constitution not only does the federal government have dominion and control of the submerged land and resources under the marginal seas but that the states themselves are debarred from acting in vital segments of this field. The Constitution defines not only the relations of the states to the federal government, but the relations of the states with one another.

It is the complainants' view that the paramount rights of the federal government in these resources are so intimately bound up with foreign policy and national defense that they constitute a continuing responsibility of the federal government which cannot be abdicated by the federal government and which cannot be taken over by the states in their own right and for their own profit. These paramount rights vitally connected with national defense and foreign policy, even more clearly than some of the rights of the federal government under the commerce and admiralty clauses, are in their nature national and may justly be said to be of such a nature as to require the exclusive jurisdiction and control of the national government. (cf. *Cooley v. Board of Wardens*, 12 How. 299, 318).² The states in joining the Union are assured freedom from the assertion of power by sister states in matters of essential national concern. It is the complainants' view that such provisions as the Congress may make for the development of these resources must conform to the standards laid down by this Court in *Illinois Central RR*

² As this Court said in an analogous situation, a "power definitely assigned by the Constitution to one department can neither be surrendered nor delegated by that department, nor vested by statute in another department or agency." *Williamson v. United States*, 289 U.S. 553, 580. See also *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 164; *Wilkerson v. Rohrer*, 140 U.S. 545, 560.

v. *Illinois*, 146 U.S. 387; *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288; and in *Helvering v. Davis*, 301 U.S. 619. The Congress cannot deliberately abdicate, as it attempted to do in Public Law 31, its fiduciary responsibilities, repudiate the public national interest, and patently violate the principle of equality among states. These constitutional issues certainly are substantial and are not in their nature frivolous. They involve serious questions of state and federal power and tremendous

³ It is clear from Public Law 31 and its legislative history that Congress attempted to give to the states not only bare legal title to the offshore oil resources but also certain constitutional functions of the federal government relative to those resources. Section 3(b) of the law "releases and relinquishes unto said States . . . all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources . . ." But Section 3(a) provides that "the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law . . . are hereby . . . recognized, confirmed, established, and vested in and assigned to the respective States . . ." Section 6 recognizes that the rights and powers mentioned in Section 3(a) are in derogation of the federal government's powers under the Constitution, for it purports to provide that " . . . the constitutional purposes of commerce, navigation, national defense, and international affairs . . . shall not be deemed to include . . . the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act."

Moreover, in Report No. 135 of Senate Committee on Interior and Insular Affairs to accompany S. J. Res. 13, 83d Cong., 1st Sess., March 27, 1953, p. 5, it was stated that "The measure also provides that in addition to title and ownership, but distinct from them, the States shall have the right and power to manage, administer, lease, develop, and use such lands and natural resources . . . and whatever rights the Federal Government may have in such management and administration are established in and assigned to the States" (Emphasis added.)

Thus Congress tried to quitclaim to the defendant states not only the federal government's proprietary interests in the submerged lands but also, as an inseparable part thereof, certain constitutional functions of the federal government, involving commerce, navigation, national defense and international affairs.

economic interests in irreplaceable resources, which have been valued in monetary terms alone in the hundreds of billions.

The substantiality of the issues presented by the complaints is further emphasized by the defendants' failure to cite any controlling authority permitting Congress to delegate to particular states the federal government's sovereign functions. Resort is had, instead, to the ordinary rules created pursuant to Article IV, Section 3, of the Constitution, a provision relating to the disposition and regulation of federal property. But not one of the authorities cited in this connection deals with any purported cession of assets which were found to be inseparable parts of national sovereignty and national interests. And not one of these authorities deals with cession of assets to states or other grantees who were "not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which [they] seek." *United States v. California*, 332 U.S. 19, 35-36.

It is not enough, in other words, to rely on precedents, valid or invalid, dealing with the cession of public lands and other properties in areas clearly within the sovereignty of the several states. We are concerned here with assets which are component parts of the federal sovereignty to such an extent that no unit of government other than the federal government can constitutionally regulate and control them. No statutory declaration to the contrary can change that fact.⁴

⁴ There is also a question whether Public Law 31, apart from any question of constitutionality, is effective by its terms to make lawful the acts of the defendant states. Section 5 of Public Law 31 excepts from the operation of Section 3 (the quit-claim section) "all lands acquired by the United States . . . in a proprietary capacity." The Congress apparently proceeded on the assumption that the United States had "paramount rights" but not proprietary rights in the off-shore resources, and was unwilling to assume responsibility for giving away to the states lands acquired by the

3. The Standing of Rhode Island to Raise the Controversy.

This Court has never laid down any artificial or mechanical rule which would bar suits between states having a substantial conflict of right or interest and involving justiciable issues such as are presented here. As this Court recently said in *Georgia v. Pennsylvania R.R.*, 324 U.S. 439, 450, "The original jurisdiction of this Court is one of the mighty instruments which the framers of the Constitution provided so that adequate machinery might be available for the peaceful settlement of disputes between States and between a State and a citizen of another State. See *Missouri v. Illinois*, 180 U.S. 208, 219-224; *Virginia v. West Virginia*, 246 U.S. 565, 599. Trade barriers, recriminations, intense commercial rivalries had plagued the colonies. The traditional methods available to a sovereign for the settlement of disputes were diplomacy and war. Suit in this Court was provided as an alternative."

In an earlier case, *Missouri v. Illinois*, 180 U.S. 208, 240-241, Justice Shiras remarked:

"The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in

federal government in a proprietary capacity. But it is our view that the paramount rights of the United States have been held by this Court to transcend but not to exclude proprietary rights, and that in fact the paramount rights of the United States embrace both sovereign and proprietary rights. This view is indeed taken by the present Attorney General of the United States in his brief on behalf of the individual defendants in opposition to Rhode Island's motion for leave to file complaint (Brief, p. 19 ff.). The statement seemingly to the contrary in Rhode Island's original brief, p. 26, was intended only to suggest that the off-shore resources were not the sort of property subject to disposition under Article IV, Section 3, clause 2 of the Constitution.

Since the United States has proprietary as well as sovereign rights in the off-shore lands, Public Law 31 is ineffective by its own terms to transfer the rights and interests of the United States therein. Such an interpretation of Public Law 31 would enable this Court to restrain the unlawful acts of the defendant states without the necessity of passing on the constitutionality of that law.

cases directly affecting the property rights and interests of a State. But such cases manifestly do not cover the entire field in which such controversies may arise and for which the Constitution has provided a remedy; and it would be objectionable, and, indeed, impossible, for the Court to anticipate by definition what controversies can and what cannot be brought within the original jurisdiction of this Court."

This Court has entertained suits between states based not only on claims arising under principles of the common law and principles of international law, but on rights arising under the Constitution (*Pennsylvania v. West Virginia*, 262 U.S. 552) and the laws of the United States (*Georgia v. Pennsylvania R. R.*, 324 U.S. 439).

As Mr. Justice Holmes stated in *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237-8, "When the states by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining quasi-sovereign interests; and the alternative to force is a suit in this Court. *Missouri v. Illinois*, 180 U.S. 208, 241. * * * The States by entering the Union did not sink to the position of private owners, subject to one system of private law."

This Court has gone further and has held that a state can enforce as against a sister state rights under the Constitution which it did not have at common law or under the law of nations.

In *Pennsylvania v. West Virginia*, 262 U.S. 552, the states of Pennsylvania and Ohio were allowed to maintain suits against the state of West Virginia to restrain that state from withdrawing natural gas from established currents of commerce in order to give a preferred position to its own domestic users. The rights asserted by Pennsylvania and Ohio were not rights which they had at common law or under the law of nations. They were their

rights to share in the benefits of the attributes of national sovereignty over interstate commerce which all states had joined in conferring upon the federal government. As Justice Van Devanter said:

“By the Constitution, Art. 1 § 8, cl. 3, the power to regulate commerce is expressly committed to Congress and therefore impliedly forbidden to the States. The purpose of this is to protect commercial intercourse from invidious restraint, to prevent interference through conflicting or hostile state laws and to insure uniformity in regulation. It means that in the matter of interstate commerce we are a single nation—one and the same people. All the States have assented to it, all are alike bound by it and all are equally protected by it.”

Certainly Pennsylvania and Ohio would not have had less standing or interest to sue West Virginia if West Virginia had urged as a defense that her action was validated by an act of Congress, although as here the Court would then have been obliged to pass on the applicability and constitutionality of the Congressional enactment. (cf. *Kansas v. Colorado*, 206 U.S. 46).

As in *Pennsylvania v. West Virginia*, the complainant states base their rights against the defendant states on the Constitution of the United States. Under the Constitution, as this Court has held, the jurisdiction and control of the marginal seas and their resources are vested in the nation. At the time of the formation of the Union the three-mile limit had not yet been clearly established; some nations were contending for a much more extended limit and others were asserting that the open seas started at the ocean's edge. There has been and is now need and occasion, and in the future there will also be need and occasion, for the national government to maintain with vigor the three-mile limit or for particular purposes by treaty or practice to extend or contract that limit. Its power in this field of foreign relations and national

defense in the interests of all states must not be encumbered or embarrassed by the conflicting powers, interests or commitments of the several states. Rhode Island gave over control of its foreign policy and national defense to the national government, not to any of its sister states. Rhode Island has a right and interest to demand that other states desist from definite and specific acts in this field which are forbidden to them under the Constitution and which are harmful and hurtful to the economic and security interests of its people.

When the states enter or are admitted into the Union on an equal footing they agree that certain functions of government, particularly some of those most vital in the field of international policy and national defense, not only shall be vested in the federal government but shall not be exercised by the several states. Each state, both in its capacity as quasi-sovereign and as *parens patriae*, has a right to demand that its sister states observe these negative covenants so as to preserve the balance between the states in their relations with each other as well as between the states and the federal government.

States need not stand mute when the federal government fails to act to protect their basic rights under the Constitution. It is then appropriate for an injured state to seek the aid of this Court in making effective the principle that the Constitution "is above and beyond the power of Congress and the states, and is alike obligatory on both." *Gunn v. Barry*, 15 Wall. (82 U.S.) 610, 623.

The fact that the law officers of the federal government are prevented for the time being from defending the constitutional rights of the federal government because of an unconstitutional federal law is a reason for and not a reason against allowing Rhode Island to defend its rights under the Constitution. In *Pennsylvania v. West Virginia* the states were not obliged to wait for federal action to vindicate their rights under the commerce clause against sister states.

This Court can take notice that in the congressional debates and the minority reports on Public Law 31, the constitutionality of that enactment was most seriously questioned. Efforts of the State Department to have the bill amended so that it would not give the privileged states the right to derogate from the present and traditional foreign policy of the United States went unheeded (*Senate Hearings*, February 16-March 4, 1953, p. 1057 ff). Likewise unheeded were the efforts of the present Attorney General of the United States to have the bill amended to minimize constitutional questions by omitting language purporting to quit-claim and abdicate all interest of the United States and by inserting in lieu thereof language merely providing that the states should have the right to administer the resources. (*Senate Hearings*, February 16-March 4, 1953, p. 925 ff). The proponents of the legislation insisted on confirming alleged rights, both sovereign and proprietary, of the oil-rich coastal states which this Court had repeatedly held that they did not have. The defendant states are asserting these rights not as agents of the federal government or as trustees for the nation, but in their own interest and right and for their own profit. This Rhode Island as a quasi-sovereign state insists the defendant states have no right to do. Rhode Island asserts its rights under the Constitution not against the federal government but against the defendant states. It is questioning not the rights or actions of the United States, but the rights and actions of the defendant states.

And Rhode Island asserts its rights on behalf of itself as a sovereign state under the Constitution and on behalf of its citizens as *parens patriae*. The rights of Rhode Island and the rights of the citizens of Rhode Island which are sought to be vindicated in this case are substantially identical. Both the state and its citizens are constitutionally entitled to be protected against having their interests in vital segments of the external national sovereignty of the United States in national defense and

in foreign affairs infringed by the action of any other state. Such interests are more than an identifiable part of any physical assets or property. They are the very real interests of a state and its citizens in the preservation of the equal footing of states under the federal Constitution. The infringement of those interests may threaten the welfare of the state and its citizens far more than the impairment of many interests more localized or tangible in nature.

The decision in *Massachusetts v. Mellon*, 262 U.S. 449, is completely inapplicable here. *Massachusetts v. Mellon* involved no conflict between Massachusetts and any other state. Massachusetts did not contend that she had an interest different or other than that of any other state. All states had the right to share or reject the benefits of the Federal Maternity Act. Mr. Justice Sutherland could see no hurt to Massachusetts as a state as long as she was not obliged to operate under the Federal Act, and the Act imposed no more financial burden on Massachusetts citizens than it did on all other United States citizens. He was careful "not to go so far as to say that a state may never intervene by suit to protect its citizens from any form of enforcement of unconstitutional acts of Congress." 262 U.S. 447, 485. Cf. *Hopkins Savings Assn. v. Cleary*, 296 U.S. 315. He considered *Massachusetts v. Mellon* to raise only abstract questions of power between the federal government and the states not affecting any one state or group of states substantially different from the others. And indeed in *Florida v. Mellon*, 273 U.S. 12, Mr. Justice Sutherland did not deny leave to Florida to bring suit to enjoin the collection of the federal inheritance tax in Florida, on the ground that the federal law was not uniform and unconstitutionally discriminated against Florida, without first examining Florida's contentions and finding them in fact untenable on their merits.

While it is quite clear that the doctrine of *Massachusetts v. Mellon* has no bearing on a suit between states involving

a substantial conflict of right and interest, the doctrine has been subjected to important limitations even in its application to suits testing the rights of the federal government in its relations to the several states. In *Missouri v. Holland*, 252 U.S. 416, this Court recognized the standing of Missouri to contest, though unsuccessfully, the constitutionality of the Federal Migratory Bird Act on the alleged ground that it was an unconstitutional invasion of Missouri's right to control wild bird life within its own borders. And in *Hopkins Savings Association v. Cleary*, 296 U.S. 315, this Court recognized the right of the State of Wisconsin to contest, successfully, the constitutionality of provisions of the Federal Home Owners Loan Act in a suit to restrain Wisconsin Savings Associations from becoming federal corporations as authorized by that Act. In distinguishing *Massachusetts v. Mellon*, Justice Cardozo said that ruling, "is nothing to the contrary, though it is made a cornerstone of the argument in favor of the statute . . . the ruling [there] was that it was no part of the duty or power of a state to enforce rights of citizens in respect of their relations to the federal government. Cf. *Florida v. Mellon*, 273 U.S. 12. Here, on the contrary, the state becomes a suitor to protect the interests of its citizens against the unlawful acts of corporations created by the state itself." If a state may sue to protect the interests of its citizens against acts of local corporations unlawfully committed under the color of federal law, it certainly should be able to sue to protect the interests of its citizens against acts of other states unlawfully committed under the color of federal law. Its citizens are much better able to defend their own interests against the unlawful acts of local savings associations than they are against the unlawful acts of other states.

In the instant cases in contrast to *Massachusetts v. Mellon*, there is a marked difference and substantial conflict of right and interest justiciable in character among the several states that are parties to these proceedings.

The defendant states, for their own profit, and in derogation of the rights of other states under the Constitution, are claiming the right to retain, develop, and control national resources, over which the federal government and the federal government alone has paramount authority and dominion.

The interests of the complainant states and their citizens are more than the interests of federal taxpayers. And they are more than the interests of the general public in the proper functioning of the federal system. The interests here spring from the complainants' rights to have the marginal seas and resources controlled, safeguarded, conserved and developed by the national government for the benefit of all the states. Such functions cannot be performed by any one of the states for its own particular purpose and profit to the disadvantage of the other states entitled to share thereon on an equal footing. The Constitution necessarily guarantees each state and its citizens the advantages of a single national policy—not 48 different policies—on matters vitally connected with foreign affairs and national defense. That guarantee is being violated by the defendant states, to the injury of Rhode Island and Alabama and their citizens.

The suits here present a controversy not with the federal government but between states. The issues involved are not abstract or hypothetical but real and pressing. They involve substantial conflict of right and of interest. It is the function of this Court under the Constitution to provide a forum for their peaceful solution. It would be unfortunate for all concerned if the development of these great resources should be plagued by clouded titles and overhanging claims until sometime in the future Congress reverses itself or modifies itself or a private litigant finds it advantageous to raise these issues in some collateral and relatively unimportant private law suit.

In the words of Justice Cardozo, "Given the encroachment, the standing of the state to seek redress as suitor is not to be gainsaid, unless protest without action is the only method of resistance. Analogy combines with reason in telling us that this is not the law." *Hopkins Savings Assn. v. Cleary*, 296 U.S. 315, 339.

4. The Appropriateness of Relief at This Time.

Whenever there have been real and substantial conflicts of right and interest between states involving issues of a justiciable character, this Court has never been niggardly in allowing the processes of this Court to be used for their peaceful and orderly adjudication and settlement. The defendant states are proceeding to develop for their own benefit and profit the resources of the marginal seas in which this Court has held the federal government had paramount rights and full dominion and the defendant states had no title or property interest. Obviously this situation in fact is one in which there is a substantial conflict of right and interest between the "have" and "have not" states, between the privileged and non-privileged states. The issues here are no more political than were the issues in the earlier off-shore oil cases. They are substantially the same issues and are equally justiciable whether they arise between the states or between the states and the federal government.

Throughout the defendants' briefs it is argued that this Court should refrain from exercising its jurisdiction because the legal issues have political aspects and repercussions. But political implications are involved in all great constitutional issues. When constitutional issues are justiciable in character and are practically susceptible of judicial solution, the mere presence of political overtones should not deter the exercise of jurisdiction. There are urgent and compelling reasons why this Court should not hesitate to exercise such jurisdiction as it has in these suits. Great interests, public and private, are involved in

the development of these resources. Clouded titles and overhanging claims are bound to plague and obstruct the prudent and economic development of these resources. Whatever difference there may be on the substantive issues involved in these suits, it is to the clear interest of all parties that they be resolved and not held in abeyance. It would in fact be in the clear interest of the defendants to join with the complainants in asking this Court to consider these suits and decide them on the merits.

The rejection of these suits without an adjudication on the merits will not protect the defendant states or the companies which accept leases from them, nor will such rejection bar by the doctrine of *stare decisis* the assertion of the rights of the federal government, the several states or private litigants next year or five or ten years hence.

In *Illinois Central RR. v. Illinois*, 146 U.S. 387; this Court had to consider a very similar situation. In 1869 the legislature of Illinois had sought to surrender the submerged lands in Lake Michigan under the Chicago harbor to the Illinois Central RR. Four years later the legislature repealed the law which had purported to surrender these lands. Twenty years later, after much litigation and confusion, this Court held that the Illinois Central had acquired no interest in the submerged lands because this Court refused to recognize a doctrine "which would sanction the abdication of the general control of the state over lands under the navigable waters of an entire harbor or bay or sea or lake. Such abdication is not consistent with the exercise of that trust which requires the government of the state to preserve such waters for the use of the public. The trust devolving upon the state for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by the transfer of the property." (146 U.S. 387, 452-453)

It is possible, indeed it is likely, that some future Congress will again reassert the paramount rights of the

federal government in the national resources under our marginal seas. Certainly, with political changes, the Congress would have no less scruples in reversing and nullifying the action of a prior Congress than the present Congress had in attempting to reverse and nullify the decisions of this Court. Any such new legislation would necessarily be premised on congressional belief that Public Law 31 was unconstitutional and without binding effect on future congressional action. And if the Congress does again reassert the paramount rights of the federal government, there can be no question that if the Attorney General should bring suit in this Court against the defendant states and their lessees, this Court would be bound by its earlier decisions to consider and resolve all the substantive issues which are raised by the present suits.

There is nothing in the decisions of this Court or in the equities of the situation which should bar the entertainment of these suits now.

5. The United States Is Not an Indispensable Party.

The arguments advanced by the defendants that these are suits against the United States or that the United States is an indispensable party are clearly without merit.

The suits are not in form or in substance against the United States. They are against the defendant states and against certain individual defendants who are co-operating in their unlawful actions under the color of authority of an unconstitutional statute. The relief sought in no way entails interference with governmental property or brings the operation of governmental machinery into play. The complainants do not seek to divest the United States of any property or to interfere in any way with the proper functions of government.

The fact that the defendant federal officers are threatening to act under an unconstitutional statute makes inapplicable the doctrine of sovereign immunity. There was no dissent from the statement of this Court in the recent case of *Larson v. Domestic and Foreign Corporation*, 337 U.S. 682, 690, that a suit against an officer is not a suit against the United States where "the conduct against which specific relief is sought is beyond the officer's powers" under the Constitution. Since Rhode Island and Alabama expressly seek that type of relief, the United States is not an essential party and its consent to be sued is unnecessary.

CONCLUSION

The complainant states are not complaining that the United States is developing the resources of the marginal seas in violation of the complainant states' rights under the Constitution. They are complaining that the defendant states are developing those resources for their own profit in violation of the complainant states' rights under the Constitution. They do not deny the right of the defendant states to interpose as a defense the contention that the Congress has sought to abdicate the paramount rights of the United States which are held in trust for all the states, but they do maintain their own right to show in this Court that under the Constitution Congress had no authority to surrender these essential attributes of national sovereignty to the detriment of the non-privileged states.

In closing, Rhode Island prays that this Court allow it leave to file its complaint against the defendants. There is a real and genuine controversy here involving justiciable rights of transcending importance and value. In the interest of all parties, the complaints of the complainant states should be received and after full hearing decided

on their merits in accordance with law which embraces the
Constitution as the supreme law of the land.

Respectfully submitted, •

WILLIAM E. POWERS,
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BENJAMIN V. COHEN and
THOMAS G. CORCORAN,
Attorneys for Complainant.

CORCORAN, YOUNGMAN & ROWE,
EUGENE GRESSMAN
Of Counsel.

February 1954.

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JAN 5 1954

HAROLD B. WILLEY, Clerk

IN THE
Supreme Court of the United States

October Term, 1953.

No., Original.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

vs.

STATE OF LOUISIANA, STATE OF FLORIDA, STATE OF
TEXAS, STATE OF CALIFORNIA, GEORGE M. HUMPHREY,
DOUGLAS MCKAY, ROBERT B. ANDERSON; IVY BAKER
PRIEST,

Defendants.

**Motion for Leave to File Objections and Brief in
Opposition to Motion for Leave to File Complaint
and for Oral Hearing.**

EDMUND G. BROWN,
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WILLIAM V. O'CONNOR,
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DOUGLAS MCKAY, ROBERT B. ANDERSON, IVY BAKER
PRIEST,

Defendants.

**Motion for Leave to File Objections and Brief in
Opposition to Motion for Leave to File Complaint
and for Oral Hearing.**

The People of the State of California move for leave to file objections and a brief in opposition to the motion of the State of Rhode Island and Providence Plantations for leave to file a complaint and, because of the length and complexity of the complaint and supporting brief, request that not less than 30 days be allowed for such purpose.

The People of the State of California further move the Court to set said motion of the State of Rhode Island and Providence Plantations for an oral hearing after the filing of briefs.

Respectfully submitted,

EDMUND G. BROWN,

Attorney General of California,

WILLIAM V. O'CONNOR,

Chief Deputy Attorney General,

EVERETT W. MATTOON,

Assistant Attorney General,

GEORGE G. GROVER,

Deputy Attorney General,

Attorneys for Movant.

January 4, 1954.

Certificate of Service.

I, William V. O'Connor, certify that I have served a copy of the foregoing Motion upon each of the following named individuals by mailing a copy of the Motion to them, postage prepaid, at the following addresses:

Hon. William E. Powers
Attorney General of Rhode Island
State Capitol
Providence, Rhode Island

Hon. Fred S. LeBlanc
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. Richard W. Ervin
Attorney General of Florida
State Capitol
Tallahassee, Florida

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

Done at Los Angeles, California, this 4th day of January, 1954.

WILLIAM V. O'CONNOR,
Chief Deputy Attorney General of California.

SUPREME COURT, U. S.

Office - Supreme Court, U. S.

FILED

JUL 6 1954

HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

**MOTION FOR LEAVE TO FILE OBJECTIONS AND BRIEF
IN OPPOSITION TO MOTION FOR LEAVE TO FILE
COMPLAINT AND FOR ORAL HEARING.**

FRED S. LEBLANC,
Attorney General,
State of Louisiana;

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana;

BAILEY WALSH,
*Special Assistant Attorney
General,*
State of Louisiana.

IN THE
Supreme Court of the United States

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McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

**MOTION FOR LEAVE TO FILE OBJECTIONS AND BRIEF
IN OPPOSITION TO MOTION FOR LEAVE TO FILE
COMPLAINT AND FOR ORAL HEARING.**

The State of Louisiana, appearing herein through its Attorney General and acting pursuant to the authority vested in him by the constitution of said State, moves this Honorable Court for leave to file objections and a brief in opposition to the motion of the State of Rhode Island and Providence Plantations for leave to file a complaint in the above entitled matter.

The State of Louisiana represented as aforesaid suggests to the Court that the complaint above mentioned is highly complex and complicated and appears to present certain allegations not made in a similar complaint which the State of Alabama has asked leave of this Court to file against the same defendants above named, and for such reasons requests that it be granted a period of not less than forty (40) days for the purpose of preparing and filing such objections.

The State of Louisiana further moves the Court to set the motion of the State of Rhode Island and Providence Plantations for oral hearing after the filing of briefs.

FRED S. LEBLANC,
Attorney General,
State of Louisiana;

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana;

BAILY WALSH,
Special Assistant Attorney
General,
State of Louisiana.

By JOHN L. MADDEN
John L. Madden

January 5, 1954.

Affidavit of Service.

I, John L. Madden, Assistant Attorney General of the State of Louisiana and of counsel for said State in the above and foregoing motion, being first duly sworn, certify that I have served a copy of said motion upon each of the following named persons by mailing a copy of the motion to them, postage prepaid, prior to the filing of said motion, and at the following addresses:

Hon. William E. Powers
Attorney General of
Rhode Island
State Capitol
Providence, Rhode Island

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. Edmund G. Brown
Attorney General of California
State Building
San Francisco, California

Hon. Richard W. Ervin
Attorney General of Florida
State Capitol
Tallahassee, Florida

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
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Hon. Herbert Brownell, Jr.
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/s/ JOHN L. MADDEN
John L. Madden

City of Washington, District of Columbia—ss.

Subscribed and sworn to before me this 5th day of
January, 1954.

BYRD C. REID
Notary Public in and for
Said City and District.

IN THE
Supreme Court of the United States

October Term, 1953
No. _____, Original

STATE OF RHODE-ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,
vs.

STATE OF LOUISIANA, STATE OF FLORIDA, STATE OF
TEXAS, STATE OF CALIFORNIA, GEORGE M. HUMPHREY,
DOUGLAS MCKAY, ROBERT B. ANDERSON, IVY BAKER
PRIEST,

Defendants.

**Objections of the States of California and Florida to
Motion of the State of Rhode Island and Provi-
dence Plantations for Leave to File Complaint.**

EDMUND G. BROWN,
Attorney General of California;

WILLIAM V. O'CONNOR,
Chief Deputy Attorney General;

EVERETT W. MATTOON,
Assistant Attorney General;

GEORGE G. GROVER,
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*Attorneys for the State of
Florida.*

January 26, 1954.

SUBJECT INDEX

	PAGE
Statement	1
Objections	2
Argument	3
Conclusion	8

TABLE OF AUTHORITIES CITED

CASES	PAGE
Alabama v. Texas et al., No., Original, 1953 Term.....	3
Arizona v. California, 298 U. S. 558.....	2
C. & S. Air Lines v. Waterman Corp., 333 U. S. 103.....	5
Doe v. Braden, 16 How. 635.....	5
Georgia v. Pennsylvania R. Co., 324 U. S. 439.....	2
United States v. Curtiss-Wright Corp., 299 U. S. 304.....	5
Ware v. Hylton, 3 Dall. 199.....	5

STATUTES

Act of April 8, 1812 (2 Stats. 701).....	5
Act of February 20, 1811 (2 Stats. 641).....	5
Act of June 25, 1868 (15 Stats. 73).....	5
Florida Constitution of February 25, 1868.....	5
Public Law 31, 83d Cong., 1st Sess. (67 Stats. 29).....	1, 2, 3, 4, 5, 6
Texas Act of December 19, 1836 (1 Laws of the Republic of Texas (1838) 133).....	5
United States Constitution, Art. IV, Sec. 3, Clause 2.....	3, 7

TEXTBOOKS

99 Congressional Record, pp. 2716, 2717, 2728, 2797.....	4
United States Supreme Court Bulletin, 1953-1954, pp. 307-2.....	2

TREATY

Treaty Between the United States and Great Britain, 1818.....	3, 4, 6
---	---------

IN THE
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STATE OF LOUISIANA, STATE OF FLORIDA, STATE OF
TEXAS, STATE OF CALIFORNIA, GEORGE M. HUMPHREY,
DOUGLAS MCKAY, ROBERT B. ANDERSON, IVY BAKER
PRIEST,

Defendants.

**Objections of the States of California and Florida to
Motion of the State of Rhode Island and Providence
Plantations for Leave to File Complaint.**

Statement.

On December 21, 1953, the State of Rhode Island and Providence Plantations (hereinafter called "Rhode Island") filed with this Court a motion for leave to file a complaint against the States of Louisiana, Florida, Texas, and California and George M. Humphrey, Douglas McKay, Robert B. Anderson, and Ivy Baker Priest. The motion was accompanied by a supporting brief and a copy of the proposed complaint. In the complaint, Rhode Island prayed for a declaration that Public Law 31, 83d Cong., 1st Sess., 67 Stat. 29, is unconstitutional and void, and for an injunction restraining defendant States from asserting jurisdiction in offshore waters, restraining the individual defendants from acquiescing in such asser-

tions, and restraining the individual defendants from making payment of certain funds to the defendant States.

Subsequently defendants filed motions for leave to file objections to Rhode Island's motion for leave to file a complaint. On January 18, 1954, this Court set Rhode Island's motion for argument at the foot of the call for Monday, February 1, 1954. 1953-54 U.S. Sup. Ct. Bull. 307-2.

The following objections are presented jointly by California and Florida. These objections are directed solely to Rhode Island's motion for leave to file a complaint and are limited to jurisdictional arguments which make it "plain that no relief may be granted in the exercise of the original jurisdiction of this Court." *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 445 (1945); *Arizona v. California*, 298 U.S. 558, 559 (1936). For that reason, no argument on the merits is being submitted at this time.

Objections.

1. The complaint does not state a case or controversy within the jurisdiction of this Court in that:

(a) Rhode Island has not been injured by the passage of Public Law 31.

(b) Rhode Island does not have standing to challenge the constitutionality of Public Law 31 on behalf of her citizens.

(c) The validity of Public Law 31 is a political and not a justiciable question.

(d) Rhode Island has no standing to challenge the alleged boundary claims of Louisiana, Florida, and Texas.

2. The United States is an indispensable party and has not consented to be sued.

Argument.

The complaint offered by Rhode Island in this case is similar to that offered by the State of Alabama on September 26, 1953, in *Alabama v. Texas et al.*, No., Original, 1953 Term. The motions of Alabama and Rhode Island for leave to file their complaints have been set for oral argument before the Court at the same time. The States of California and Florida jointly filed objections, together with a supporting brief, to Alabama's motion for leave to file a complaint, and these objections to the filing of Alabama's complaint are equally applicable to the complaint of the State of Rhode Island. To avoid repetition, therefore, California and Florida respectfully ask that the argument in support of their objections to Alabama's motion be herein incorporated by reference in support of the objections set forth above.

The brief in support of Rhode Island's complaint contains only two arguments not advanced by Alabama, namely: (A) that Public Law 31 may operate as a renunciation by the United States of its obligations under the Treaty of 1818, and (B) that the submerged lands do not constitute property within the meaning of Article IV, Section 3, Clause 2 of the Constitution.

A

Rhode Island argues that Louisiana, Florida, and Texas "propose to rely on Public Law 31 to extend their boundaries nine nautical miles into the Gulf of Mexico" and that such action would "operate as a renunciation" by the United States of its obligations, under the Treaty of 1818 with Great Britain, to recognize the three-mile territorial limit. (Br., Points I and IV, pp. 12, 13, 18, 33,

34.) Rhode Island contends that, as a result, Canada and Newfoundland will be released from their corresponding treaty obligations and will take retaliatory measures against the New England fishing industry which are "bound to have deleterious effect on the economy of Rhode Island." (Br. pp. 13, 34, 35.) Examination of these contentions will make it clear that they do not give Rhode Island standing to attack the constitutionality of Public Law 31.

First, Public Law 31 does not authorize the defendant States or any State to extend its boundaries beyond three miles. This was fully demonstrated in the brief of California and Florida (pp. 10-11) and the brief of the individual defendants (pp. 31-32) in support of the objections to Alabama's motion for leave to file a complaint. As pointed out in those briefs, Public Law 31 vests in defendant States no more than the submerged lands within the three-mile belt or within those States' historic legal boundaries. If any State has a claim that her historic legal boundary is actually more than three miles seaward, the Act does not ratify or in any way determine the merits of that claim. The debate in the Senate makes it clear that it was the firm purpose of Congress neither to prejudice nor to aid the proof of any such claim which might be made. 99 Cong. Rec. 2716, 2717, 2728, 2792. Thus, nothing in Public Law 31 remotely conflicts with the obligations of the United States under the Treaty of 1818 or the Treaty of 1924.

Second, the claims of Louisiana, Florida, and Texas to more than three miles in the Gulf of Mexico antedate the Submerged Lands Act and are based on long-standing constitutional and statutory provisions. Louisiana's

claim goes back to her 1811 act of admission,¹ Texas' to an 1836 act of the Republic of Texas,² and Florida's to her 1868 Constitution.³ Neither Canada nor Newfoundland has ever asserted that the claims made by these States affected the obligations under the Treaties. The situation is not altered by the passage of Public Law 31. Thus, there is no foundation for the prediction that Rhode Island will be injured by reason of reprisals by foreign nations.

Third, even if we accept the untenable assumption that Public Law 31 will be regarded by Canada as a renunciation by the United States of the Treaty of 1818, Rhode Island would have no cause of action against these defendants. Indeed, these circumstances would present no justiciable controversy. It has long been well settled that questions regarding the making, effect, or violation of a treaty are political and not justiciable in nature. *Ware v. Hylton*, 3 Dall. 199, 260 (1796); *Doe v. Braden*, 16 How. 635, 656 (1853). This rule is a part of the broad principle that decisions in the field of foreign policy "are wholly confided by our Constitution to the political departments of the government, Executive and Legislative." *C. & S. Air Lines v. Waterman Corp.*, 333 U.S. 103, 111 (1948); *United States v. Curtiss-Wright Corp.*, 299 U.S. 304, 319-321 (1936).

¹See Act of Congress of February 20, 1811, 2 Stat. 641; Act of Congress of April 8, 1812, 2 Stat. 701, 702.

²Texas Act of December 19, 1836, 1 Laws of the Republic of Texas (1838) 133.

³Florida Constitution of February 25, 1868; see Act of Congress of June 25, 1868, 15 Stat. 73.

Any effect Public Law 31 might possibly have on the Treaty of 1818 and the relations between the United States and the British Commonwealths clearly lies within the domain of international relations. The controversy between the United States and Great Britain over the North Atlantic fisheries began even before the Treaty of 1818 and has continued intermittently almost to the present time. This long-standing controversy, which was the subject of the famous North Atlantic Coast Fisheries Arbitration of 1911, is a classic example of the problems which arise between nations. The responsibility for dealing with these problems lies exclusively with the political departments of the Government.

From Rhode Island's own arguments it is apparent that she has predicated her complaint upon an alleged threat of injury which, if it exists at all, lies wholly within the domain of international relations. For example, Rhode Island states:

"The interest of Rhode Island in preventing large scale renewal of earlier troubles in these northern fisheries can only be protected by bringing this suit."

Br. p. 13; see also p. 34.

The precedents cited above make it clear, however, that the alleged interest of Rhode Island in preventing a renewal of the international controversy over the North Atlantic fisheries can be protected only by the political branches of the Government in the conduct of international relations and not by court action. Action in the

field of foreign affairs by the political departments of the Government may not be controlled, and is not subject to review, in a suit between States.

B

The other argument made by Rhode Island which was not advanced in the Alabama case is that the submerged lands do not constitute "property" within the meaning of Article IV, Section 3, Clause 2 of the Constitution. (Br., Point II, p. 20.) It is suggested that "there is no Federal 'property' to be disposed of" because the submerged lands "belong to the family of nations" (Br. pp. 22-23) and because the interest of the United States consists of "paramount rights" which cannot be transferred to the States. (Br. pp. 20, 27.)

This, of course, is an argument on the merits which it is not appropriate to consider at this jurisdictional stage of the case. However, it should be emphasized that the argument cannot conceivably confer any standing upon Rhode Island to bring this suit. If it is true that the United States has attempted to convey property belonging to the family of nations, that action would be subject to attack, if at all, only by a member of the family of nations and in the International Court of Justice. In such a controversy the State of Rhode Island, not being a national sovereign, would have no standing.

Similarly, if it is true that the United States has improperly transferred any of the rights of the United States to the coastal States, the only injury conceivably

suffered by Rhode Island (herself a coastal State) is one suffered in common with all people generally. As shown in our brief in opposition to Alabama's motion (pp. 5-19), a State has no right to challenge the constitutionality of Federal action under such circumstances.

Conclusion.

The States of California and Florida respectfully urge that the motion of the State of Rhode Island and Providence Plantations for leave to file a complaint should be denied.

Respectfully submitted,

EDMUND G. BROWN,
Attorney General of California;
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EVERETT W. MATTOON,
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Assistant Attorney General;
JOHN D. MORIARTY,
Special Assistant Attorney General,
State Capitol,
Tallahassee, Florida.

*Attorneys for the State of
Florida.*

January 26, 1954.

Certificate of Service.

I, William V. O'Connor, certify that I have served a copy of the foregoing Objections upon each of the following named individuals by mailing a copy of said Objections to them, postage prepaid, at the following addresses:

Hon. William E. Powers
Attorney General of Rhode Island
Providence County Court House
Providence, Rhode Island

Hon. Fred S. LeBlanc
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

And I further certify that I have served a copy of the Objections of the States of California and Florida to the Motion of the State of Alabama for leave to file a complaint in this Court in the case of *Alabama v. Texas et al.*, No., Original, October 1953 Term, upon the Attorney General of Rhode Island and Providence Plantations by mailing a copy of said Objections, postage prepaid, addressed as follows:

Hon. William E. Powers
Attorney General of Rhode Island
Providence County Court House
Providence, Rhode Island.

Done at Los Angeles, California, this 26th day of January, 1954.

WILLIAM V. O'CONNOR,
Chief Deputy Attorney General of California.

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HAROLD B. WILLEY, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No. , Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

**OBJECTIONS OF THE STATE OF LOUISIANA TO THE
MOTION OF THE STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS FOR LEAVE TO FILE
COMPLAINT, AND STATEMENT IN SUPPORT OF
SUCH OPPOSITION.**

FRED S. LeBLANC,
*Attorney General,
State of Louisiana;*

JOHN L. MADDEN,
*Assistant Attorney General,
State of Louisiana;*

BAILEY WALSH,
*Special Assistant Attorney
General,
State of Louisiana.*

INDEX

Page

OBJECTIONS	1
STATEMENT IN SUPPORT OF OBJECTIONS	3
I. Rhode Island Has No Legal Standing Under Its Complaint to Sue, Either as Sovereign, or as Parens Patriae for Its Citizens, With Respect to an Appropriation or Grant of Property by Congress	3
(A) The Submerged Lands Act is, in effect, an appropriation act and a grant of property by the United States	3
(B) Rhode Island has no legal standing to attack an Appropriation Act and a grant of Property by the United States	3
1. Rhode Island has no legal standing to attack an Appropriation Act	3
2. Rhode Island has no legal standing to attack a Congressional Grant of Property of the United States	7
(C) Rhode Island has no legal standing in this Court to seek the Vindication of a general public interest	10
(D) Rhode Island has no "equal footing" rights in regard to an Appropriation or Grant of Property of the United States	11
II. Rhode Island Is Not The Real Party in Interest. She May Not Sue a Sovereign State, Louisiana, on Behalf of Certain of Her Citizens, in Violation of the Eleventh Amendment	12
III. Rhode Island's Complaint Fails to Present a Case or Controversy in Any Respect Under Article III of the Constitution	15
IV. Rhode Island's Complaint Should Be Dismissed for Want of Equity	17
(A) Rhode Island does not Allege the Absence of An Adequate Remedy at Law	17

(B) Rhode Island is Suffering No "Irreparable Injury" With Respect to the Appropriation and Grant of Property	17
(C) There is No Case or Controversy over Boundaries, much less any "Irreparable Injury" concerning them	18
(D) Rhode Island's Complaint does not Allege Facts Showing "Irreparable Injury" to her by Virtue of any "Assertion" of Dominion by Louisiana	18
CONCLUSION	21
CERTIFICATE OF SERVICE	22

TABLE OF CASES

Ashwander v. Tennessee, (1935) 297 U. S. 288	6
Burford v. Sun Oil Company, (1943) 319 U. S. 333, note 29	20
California v. Latimer, (1928) 305 U. S. 255	19
City of Chicago v. Field Crest Dairies, 316 U. S. 168	20
Emblem v. Lincoln Land Company, (1902) 184 U. S. 660	9
Georgia v. Pennsylvania Railroad, (1945) 324 U. S. 439	10
Georgia v. Stanton, (1868) 6 Wall. 50, 77	5
Gibson v. Chouteau, (1872) 13 Wall. 99	9
Henrietta Mills v. Rutherford County, (1930) 281 U. S. 121	17
Irvine v. Marshall, (1858) 20 How. 558	9
Leases of Mineral Lands on Isle Royale, (1846) 4 op. Atty. Gen. 487	9
Light v. United States, (1911) 220 U. S. 523	8
Louisiana v. Texas, (1899) 176 U. S. 1	13
Massachusetts v. Mellon, (1923) 262 U. S. 447 ...	3, 6, 10, 15
Missouri v. Holland, (1920) 252 U. S. 416	10
New Hampshire v. Louisiana, (1883) 108 U. S. 96	13
Oklahoma v. Atchison, Topeka and Santa Fe Railway Co., (1911) 220 U. S. 277	13, 14
Oklahoma v. Cook, (1938) 304 U. S. 389	13, 14
Perkins v. Lukens Steel Company, (1940) 310 U. S. 113	6, 10

Index Continued

iii

	Page
Stearns v. State of Minnesota, (1900) 179 U. S. 223	11
Terrace v. Thompson, (1923) 263 U. S. 197	17
United States v. California, (1947) 332 U. S. 19	7, 8
United States v. Gratiot, 14 Pet. 526	8
United States v. Louisiana, (1950) 339 U. S. 699; 340 U. S. 899	18
United States v. San Francisco, (1940) 310 U. S. 16	8
United States v. State of Texas, (1950) 339 U. S. 707	11
United States v. Wyoming, (1948) 335 U. S. 895	9
Van Brocklin v. Tennessee, (1886)	8

OTHER AUTHORITIES

CONSTITUTION OF THE UNITED STATES	
Article III	15
Article IV, Sec. 3, cl. 2	7
Eleventh Amendment	12, 14, 18
PUBLIC LAW 31 (The Submerged Lands Act)	3, 10, 11, 12, 14, 15, 16, 17, 18
SWAMP LANDS ACTS, 43 U. S. C. 982	9

IN THE
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No. _____, Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
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STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

**OBJECTIONS OF THE STATE OF LOUISIANA TO THE
MOTION OF THE STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS FOR LEAVE TO FILE
COMPLAINT. AND STATEMENT IN SUPPORT OF
SUCH OPPOSITION.**

Now comes the State of Louisiana, through its Attorney General, appearing herein for the sole and only purpose of asking leave of this Court to file its objections to the motion of the State of Rhode Island and Providence Plantations for leave to file complaint against the above named defendants, and submits the following reasons and statement in support of such opposition:

I.

The State of Rhode Island and Providence Plantations (hereinafter called Rhode Island) has no legal standing

under its complaint to sue, either as sovereign or as parens patriae for its citizens, with respect to an appropriation or grant of property by Congress.

II.

Rhode Island is not the real party in interest. She may not sue a sovereign state, Louisiana, on behalf of certain of her citizens, in violation of the Eleventh Amendment.

III.

Rhode Island's complaint fails to present a case or controversy in any respect under Article III of the Constitution.

IV.

Rhode Island's complaint should be dismissed for want of equity.

WHEREFORE, the State of Louisiana prays that its objections and opposition to the filing of complaint by the State of Rhode Island be sustained; that the motion of the State of Rhode Island for leave to file said complaint be denied; and for all appropriate orders thereunto pertaining.

FRED S. LEBLANC,
Attorney General,
State of Louisiana

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana

BAILEY WALSH,
Special Assistant Attorney
General,
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State of Louisiana

STATEMENT IN SUPPORT OF OBJECTIONS

I.

RHODE ISLAND HAS NO LEGAL STANDING UNDER ITS COMPLAINT TO SUE, EITHER AS SOVEREIGN OR AS PARENS PATRIAE FOR ITS CITIZENS, WITH RESPECT TO AN APPROPRIATION OR GRANT OF PROPERTY BY CONGRESS.

(A) The Submerged Lands Act is, in Effect, an Appropriation Act and a Grant of Property by the United States.

It seems perfectly clear that Public Law 31 (The Submerged Lands Act), is only an appropriation act, in effect, and a grant of property by the United States.

Section 3, the key section, does two basic things: it (1) quitclaims, in effect, certain lands beneath navigable waters to the States, and (2) appropriates to the lessor-states all moneys subject to the control of the United States in escrow, which were paid under State leases. Therefore, the Act merely quitclaims any interest the United States may have in the property, and appropriates certain moneys held by the United States in escrow.

(B) Rhode Island Has No Legal Standing to Attack an Appropriation Act and a Grant of Property by the United States.

1. RHODE ISLAND HAS NO LEGAL STANDING TO ATTACK AN APPROPRIATION ACT.

Rhode Island has failed to cite a single authority, in its brief, indicating that she may attack either an appropriation act or a grant of property by the United States, as a sovereign or as parens patriae for her citizens.

On the contrary, her claim that in either capacity she may assail an appropriation act and grant of property by the United States is in direct conflict with the potent case of *Massachusetts v. Mellon*, (1923), 262 U. S. 447. That was also an original suit in this Court. Massachusetts sought to attack the constitutionality of the Maternity Act of 1921, which provided "for an initial appropriation and thereafter annual appropriations" (262 U. S. 478). Massachu-

setts claimed that these appropriations cast an unfair burden upon her as an industrial state and would cause her "to lose the share which it would otherwise be entitled to receive of the moneys appropriated", and that the Act was unconstitutional as a violation of the Tenth Amendment.

This Court dismissed the case for *want of jurisdiction*. It held that:

"... the State of Massachusetts presents no justiciable controversy, either in its own behalf or as the representative of its citizens." (262 U. S. 480).

This Court went on further to point out that, at best, only political, not judicial, questions were involved, and that *no personal or property right* of Massachusetts had been injured. The Court, among other things, said:

"First. The state of Massachusetts in its own behalf, in effect, complains that the act in question invades the local concerns of the state, and is a usurpation of power, viz. the power of local self-government, reserved to the states.

Probably it would be sufficient to point out that the powers of the state are not invaded, since the statute imposes no obligation *but simply extends an option which the state is free to accept or reject*. But we do not rest here. Under article 3, section 2, of the Constitution, the judicial power of this court extends 'to controversies . . . between a state and citizens of another state' and the court has original jurisdiction 'in all cases . . . in which a state shall be a party'. The effect of this is not to confer jurisdiction upon the court merely because a state is a party, but only where it is a party to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant." (262 U. S. 480). (Emphasis supplied).

• • • • •
 "What, then, is the nature of the right of the state here asserted, and how is it affected by this Statute? Reduced to its simplest terms, it is alleged that the

statute constitutes an attempt to legislate outside the powers granted to Congress by the Constitution and within the field of local powers exclusively reserved to the states. Nothing is added to the force or effect of this assertion by the further incidental allegations that the ulterior purpose of Congress thereby was to induce the states to yield a portion of their sovereign rights; that the burden of the appropriations falls *unequally upon the several states*; and that there is imposed upon the states an illegal and unconstitutional option either to yield to the federal government a part of their reserved rights or lose their share of the moneys appropriated. *But what burden is imposed upon the states, unequally or otherwise? Certainly there is none*, unless it be the burden of taxation, and that falls upon their inhabitants, who are within the taxing power of Congress as well as that of the states where they reside." (262 U. S. 482). (Emphasis supplied).

.

"It follows that, in so far as the case depends upon the assertion of a right on the part of the state to sue in its own behalf, we are without jurisdiction. In that aspect of the case we are called upon to adjudicate, not rights of person or property, not rights of dominion over physical domain, not quasi sovereign rights actually invaded or threatened, but abstract questions of political power, of sovereignty, of government." (262 U. S. 484, 485).

In that case this Court also relied on *Georgia v. Stanton* (1868), 6 Wall. 50, in which Georgia sought to enjoin the Secretary of War from carrying into execution certain acts of Congress which, it was claimed, would annul and abolish the existing State governments. That case was also dismissed for *want of jurisdiction* on the ground that the bill presented "no case of private rights or personal property infringed." (6 Wall. 77).

Also, this Court utterly demolished Massachusetts' argument that she could sue in *parens patriae* or "as the representative of its citizens", saying:

"But the citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a state, as *parens patriae*, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof . . . it is no part of its duty or power to enforce their rights in respect of their relations with the federal government. In that field, it is the United States, not the state, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." (262 U. S. 485).

Rhode Island does not claim any specific interest in either the funds in escrow appropriated or the property granted to the States, and indeed she has none. The only possible impact that this appropriation and grant can have upon Rhode Island would be to increase the incidence of federal taxation on her citizens. As pointed out in *Massachusetts v. Mellon*, *supra*, no State has legal standing to complain of the exercise of the taxing power by the United States.

Massachusetts v. Mellon has been repeatedly cited for the proposition that no legal rights of a State are affected by an appropriation act of the United States. See *Perkins v. Lukens Steel Co.* (1940), 310 U. S. 113, 125; and Mr. Justice Brandeis concurring in *Ashwander v. Tennessee* (1935), 297 U. S. 288, 348.

In *Massachusetts v. Mellon*, the statute under consideration was held to have "simply extended an option which the state was free to accept or reject" (262 U. S. 480). So here the Submerged Lands Act has simply extended an option to Rhode Island which she is free to accept or reject. She is thus in a position strikingly similar to that of Massachusetts in *Massachusetts v. Mellon*, *supra*.

We submit that *Massachusetts v. Mellon* is an insuperable obstacle to the jurisdiction of this Court in this case, which Rhode Island simply cannot overcome, or pretend does not exist.

2. RHODE ISLAND HAS NO LEGAL STANDING TO ATTACK A CONGRESSIONAL GRANT OF PROPERTY OF THE UNITED STATES.

Rhode Island has failed to cite any authority to show that a State or a State acting for its people may judicially attack a congressional grant of property by the United States. She is wholly precluded from making any such attack by Article IV, Section 3, clause 2, of the Constitution, which provides:

“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;”

On pages three and four of Rhode Island's brief, considerable emphasis is placed on the concluding clause of Article IV, Section 3, of the Constitution, which reads:

“... and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular state.”

We do not construe this clause as limiting the authority of Congress to dispose of the territory or other property of the United States. The rather obvious meaning to be attached to this clause, so far as a state is concerned, is that Congress may not prejudice the proprietary claims or rights of a state within its sphere of sovereignty. No state can be prejudiced by the grant of United States property by Congress.

Rhode Island contends in its brief that the “paramount rights” of the Federal Government do not constitute “property” within the meaning of Article IV, Section 3, clause 2 of the Constitution (Br. p. 20, et seq.). But when this court referred to the area in controversy in *United States v. California*, 332 U. S. 19, it was said:

“But beyond all this we cannot and do not assume that Congress, which has constitutional control over

Government property, will exercise its powers in such way as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission." (Emphasis supplied).

No one, sovereign or individual, has ever, with success, judicially attacked a grant of government property by the United States. This delegation of power, in trust to Congress, is exclusive and absolute, and "no state can interfere with this right, or embarrass its exercise." *Van Brocklin v. Tennessee* (1886), 117 U. S. 151, 168. This sweeping congressional power is "without limitations" and, the Court added:

"... 'it is not for the courts to say how that trust shall be administered. That is for Congress to determine.' Thus, Congress may constitutionally limit the disposition of the public domain in a manner consistent with its views for public policy." *United States v. San Francisco* (1940) 310 U. S. 16, 29, 30. *Light v. United States* (1911) 220 U. S. 523, 537; *United States v. Gratiot*, 14 Pet. 526, 527.

Indeed, in *United States v. California* (1947), 332 U. S. 19, this Court said, with respect to that character of the very property now in question:

"For Article IV, Section 3, Cl. 2 of the Constitution vests in Congress 'Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.' We have said that *the constitutional power of Congress in this respect is without limitation. United States v. City and County of San Francisco*, 310 U. S. 16, 29, 30, 60 S. Ct. 749, 756, 757, 84 L. Ed. 1050. Thus neither the courts nor the executive agencies, could proceed contrary to an Act of Congress in this congressional area of national power." (332 U. S. 27).

Disposition of Government property by *grant* has always been held to be an appropriate method of con-

gressional disposition, and has never been successfully assailed by a third party. See *Emblin v. Lincoln Land Company* (1902), 184 U. S. 660; *Gibson v. Chouteau* (1872), 13 Wall. 99; *Irvine v. Marshall* (1858), 20 How. 558; *Leases of Mineral Lands on Isle Royale* (1846), 4 Op. Atty. Gen. 487. Rhode Island may no more assail this grant of Government property than it may attack a patent issued under the Swamp Land Acts (43 U.S.C. 982), or the many other Congressional acts providing for the issuance of grants to States and individuals.

In addition, a grant by Congress of property previously adjudicated by this Court to be vested in the United States, has been recognized by this Court as a complete bar to further litigation. In *United States v. Wyoming* (1948), 335 U. S. 895, title to certain real estate had been adjudicated to be vested to the United States. Congress then passed an Act directing the issuance of a patent to the State of Wyoming for the real estate involved, and the patent was issued. In recognizing the Act of Congress and finally terminating the litigation, this Court stated that "*there is no need or requirement for further consideration by this court*", (emphasis supplied), saying:

"The claim for damages arose entirely from the possession by the defendant Ohio Oil Company of the land described in said Act of Congress, and its extraction of oil therefrom. Inasmuch as the patent issued by the United States vests title to said land in the State of Wyoming during the entire period of possession by the defendant Ohio Oil Company, there is no need or requirement for further consideration by the Court of plaintiff's demand for a money judgment."

United States v. Wyoming, supra, is a precedent squarely in point and a complete bar to any further litigation over the property involved in Rhode Island's complaint. Since such an Act of Congress binds the United States, *a fortiori*, it also binds Rhode Island.

The cases cited by Rhode Island, *Georgia v. Pennsylvania RR* (1945), 324 U. S. 439, and *Missouri v. Holland* (1920), 252 U. S. 416, simply do not lend any standing to Rhode Island to attack an appropriation act or grant of Government property by the United States.

As we have shown above, the power of Congress to dispose of Government property is absolute and exclusive. Congress may sell it or give it away, as it deems best. An outright grant of Government property is a thoroughly accepted mode of disposition.

Therefore, we need not argue that Congress was wise in quitclaiming or granting the property. Congress specifically stated in Section 3 of the Submerged Lands Act that ownership of the lands by the states is "in the public interest". It is not for this Court to say otherwise or to supervise the wisdom of Congressional enactments.

(C) Rhode Island Has No Legal Standing in This Court to Seek the Vindication of a General Public Interest.

Both as sovereign and as *parens patriae* for its citizens, Rhode Island seeks in its complaint to vindicate an interest which complainant itself describes as belonging to all the people.

We have heretofore cited *Massachusetts v. Mellon* as authority for the proposition that a state may not attack an appropriation act of Congress. In that case this Court pointed out the futility of a state seeking judicial redress for an injury suffered in common by people generally and in which the complainant has only some indefinite interest in the relief sought.

Here, Rhode Island seeks to vindicate a general public interest by asking this Court to construe an act of Congress. The juridicial impossibility of such action was clearly stated in *Perkins v. Lukens Steel Company, supra*.

(D) Rhode Island Has No "Equal Footing" Rights in Regard to an Appropriation or Grant of Property of the United States.

The State of Rhode Island seeks to invoke the jurisdiction of this Court in part on the basis that its sovereign rights are being infringed or placed in jeopardy under the "equal footing" clause of the Constitution of the United States. Complainant's position is largely predicated on the alleged circumstance that defendant States have been given certain economic advantages under the Submerged Lands Act (Public Law 31, 83rd. Congress, 1st Sess.; c. 65), and that the State of Rhode Island and its citizens are thereby deprived of their asserted share of certain bounties.

The "equal footing" clause applies only to political rights and obligations, not to economic interests. *Stearns v. State of Minnesota* (1900), 179 U. S. 223, 245. Citing with approval the case last mentioned, this Court made the following pronouncement in *United States v. State of Texas* (1950), 339 U. S. 707, 716, to-wit:

"The 'equal footing' clause has long been held to refer to political rights and to sovereignty . . . It does not, of course, include economic stature or standing . . . Area, location, geology, and latitude have created great diversity in the economic aspects of the several states. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty."

The Submerged Lands Act does not create obligations of one state to another, but in addition to the appropriation therein made, constitutes a grant of property by the United States to the several states.

The following statement was made in *Stearns v. State of Minnesota* (179 U. S. 223, 245), to-wit:

"It has often been said that a state admitted into the Union enters therein in full equality with all the others, and such equality may forbid any agreement

or compact limiting or qualifying political rights and obligations; whereas, on the other hand, a mere agreement in reference to property involves no question of equality of status, but only of the power of a state to deal with the nation or with any other state in reference to such property. The case before us is one involving simply an agreement as to property between a state and the nation". (Emphasis supplied).

Even if it were possible to apply economic factors to the "equal footing" clause, Rhode Island could not complain that the Submerged Lands Act, expressly or impliedly, confers any greater benefits on one State than another. When the Submerged Lands Act was adopted, the fact that the State of Louisiana had known oil and gas resources within its maritime belt while no such discoveries had been made in Rhode Island's submerged coastal lands, brought about no resulting status of disparity between the two States named. The Act not only had the effect of relinquishing all proprietary rights of the United States to the several States, covering lands and the *then known* resources thereof within the "boundaries" of such States, but it also gave to each State the right of future exploration and development within such areas.

II.

RHODE ISLAND IS NOT THE REAL PARTY IN INTEREST. / SHE MAY NOT SUE A SOVEREIGN STATE, LOUISIANA, ON BEHALF OF CERTAIN OF HER CITIZENS, IN VIOLATION OF THE ELEVENTH AMENDMENT.

It is a fundamental rule in original jurisdiction cases that a motion for leave to file a complaint must be denied where the State brings suit on behalf of certain of her citizens and is not the real party in interest. This rule stems from the Eleventh Amendment which prohibits suit by citizens of one State against another State. Thus, a citizen of one State may not sue another State through the camouflage of persuading the State of his residence to sue

on his behalf in the original jurisdiction of this Court. *Louisiana v. Texas* (1899), 176 U. S. 1; *New Hampshire v. Louisiana* (1883), 108 U. S. 96.

Nor can a State escape the ironbound prohibition of the rule by "asserting an economic interest." The motion for leave to file must be denied. *Oklahoma v. Cook* (1938), 304 U. S. 389, 394; *Oklahoma v. Atchison, Topeka and Santa Fe Railway Co.* (1911), 220 U. S. 277. Thus in the *Cook* case, Mr. Chief Justice Hughes, speaking for a unanimous Court, said:

"In *Oklahoma v. Atchison, Topeka & Santa Fe Railway Co.*, 220 U. S. 277, 31 S. Ct. 434, 55 L. Ed. 465, the State sought to maintain an action in this Court against the carrier to restrain it from charging unreasonable rates within Oklahoma. Setting forth the congressional grant under which the railway in question was operated and insisting that the Company was not entitled to charge the inhabitants of Oklahoma a greater freight rate for the transportation of certain commodities than that authorized for similar service in Kansas, the State alleged its interest in the development of its communities and in the success of its industries, and the menace to the future of the State through what was deemed to be a violation of the conditions of the grant. But the Court pointed out that the State was not seeking to protect a direct interest of its own in the transportation of the commodities in question, but was endeavoring to compel the railway company to respect the rights of the shippers of these commodities. *Id.*, pages 286, 287, 31 S. Ct. 434. The bill was dismissed. The Court summarized its conclusion in these words: 'We are of opinion that the words in the Constitution conferring original jurisdiction on this Court in a suit "in which a party shall be a party" are not to be interpreted as a conferring such jurisdiction in every cause in which the state elects to make itself strictly a party plaintiff of record, and seeks not to protect its own property, but only to vindicate the wrongs of some of its people'" (304 U. S. 394, 395). (Emphasis supplied).

Both the *Cook* and *Santa Fe* cases were cited with approval in *Georgia v. Pennsylvania RR* (324 U. S. 446, 451).

Since the only injury complained of with respect to fishing is to citizens of Rhode Island, not to the State itself, the State is not the real party in interest and the motion for leave to file the complaint should be denied. The Eleventh Amendment rigidly prohibits suit by them against Louisiana, directly or indirectly.

Rhode Island does not allege that the Submerged Lands Act places Louisiana in position to enact laws or adopt regulations that discriminate against the citizens of Rhode Island in shrimping and commercial fishing operations in the waters off the coast of Louisiana but that in some manner Louisiana's assertion of dominion in such area will enable Canada and Newfoundland to be released from certain treaty obligations.

Rhode Island's complaint presents a domestic issue of whether or not the Submerged Lands Act is a constitutional vehicle for the disposal of Government property within state boundaries. That Act has nothing whatever to do with treaties between the United States and foreign powers respecting the width of maritime belts within which commercial fishing may be conducted off the coasts of the sovereign parties to such treaties.

By much the same token, that Rhode Island cannot seek to vindicate a general interest, *in which the United States is parens patriae for all of its people*, she cannot act for the United States in an effort to protect its treaty obligations with other nations by undertaking to sue her sister states. If certain of the defendant states are taking action, or contemplating action, to interfere with or disrupt treaties, only the Federal Government may intervene to cause that action to cease.

III

RHODE ISLAND'S COMPLAINT FAILS TO PRESENT A CASE OR CONTROVERSY IN ANY RESPECT UNDER ARTICLE III OF THE CONSTITUTION.

Rhode Island's complaint fails to set forth a "case or controversy" under Article III of the Constitution, for the following reasons:

(A). Rhode Island has suffered no infringement of any personal or property right by virtue of the appropriation and grant of property in the Submerged Lands Act, and hence has no legal standing to sue with respect to it, as pointed out in I (C) above. *Massachusetts v. Mellon* alone is a complete bar.

(B). There is no case or controversy with respect to the unsupported statement made in Rhode Island's brief (P. 18) that Louisiana proposes to rely on Public Law 31 to *extend* her boundary into the Gulf of Mexico. The Submerged Lands Act gives any state the right to extend her boundary three geographical miles seaward from coast in case it did not have a pre-existing boundary that far seaward; however, the Act does not authorize any state to extend its seaward boundaries beyond the distance aforesaid. Before the Court is the question of the validity of the Submerged Lands Act, not what any state or states might undertake to do in disregard of such enactment.

(C). The seaward boundaries of Louisiana were neither created nor altered under the provisions of the Submerged Lands Act.

Title I, Section 2 (b) of the Submerged Lands Act reads as follows, to-wit:

"The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes *as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof* but in no

event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico."

Title II, Section 4 of the same Act provides that:

"The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

Thus, it is seen that in adopting the Submerged Lands Act Congress only dealt with the seaward boundaries of the several States in two main respects: First, it recognized such boundaries as they existed when each respective State was admitted to the Union, and second, it gave consent to those States admitted to statehood after the formation of the Union that had not already done so to extend their seaward boundaries to a line three geographical miles distant from its coast line,

IV.

**RHODE ISLAND'S COMPLAINT IS INSUFFICIENT FOR
WANT OF EQUITY.**

Rhode Island's complaint does not set forth any ground of equitable jurisdiction, and so is wholly insufficient, for the following reasons:

(A) Rhode Island Does Not Allege the Absence of an Adequate Remedy at Law.

The absence of such an allegation, alone, is fatal to Rhode Island's claim to equitable relief. Thus, in *Henrietta Mills v. Rutherford County, N. C.* (1930), 281 U. S. 141, a bill seeking to enjoin the collection of taxes was dismissed for want of jurisdiction on the ground that there was an adequate remedy at law. Speaking for a unanimous court, Mr. Chief Justice Hughes delineated the basic requirement that equitable jurisdiction depends upon the lack of an adequate remedy at law, as follows:

"Section 16 of the Judiciary Act of 1789 (1 Stat. 82) provided 'That suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law.'"

See also, *Terrace v. Thompson* (1923), 263 U. S. 197, 214, where the Court, among other things, said:

"That a suit in equity does not lie where there is a plain adequate and complete remedy at law is so well understood; as not to require the citation of authorities.

(B) Rhode Island Is Suffering No "Irreparable Injury" With Respect to the Appropriation and Grant of Property.

Rhode Island has no legal standing to sue and no right to any "equal footing" with respect to the appropriation of the funds held in escrow or the grant of property made by the Submerged Lands Act. Accordingly she can suffer no "irreparable injury".

(C) There Is No Case or Controversy Over Boundaries. Much Less Any "Irreparable Injury" Concerning Them.

With respect to Louisiana's seaward boundaries, the Submerged Lands Act did not purport to alter them or create new ones (III C, *supra*). And the Louisiana Legislature, the only branch of the Louisiana State Government which could have constitutionally undertaken to extend them, has taken no action in that regard since the passage of said Act and the decree of the Court in *United States v. Louisiana*, 340 U. S. 899, *supra*.

Moreover, no one with any power to act for the State can "propose" or has "proposed" to extend Louisiana's seaward boundaries. In fact, a "proposal to extend a boundary is meaningless. Only the Legislature can extend them, and in turn, the Legislature cannot "propose" to extend them. It can only act or refrain from acting. Hence, Rhode Island's allegations that Louisiana proposes to extend her boundaries have no legal substance; there is no case or controversy respecting boundaries, and there is no "irreparable injury" with respect thereto.

(D) Rhode Island's Complaint Does Not Allege Facts Showing "Irreparable Injury" to Her by Virtue of Any "Assertion" of Dominion by Louisiana.

Taking, at their face value, the allegations of Rhode Island's complaint (paragraphs XVIII, XIX) that Louisiana is "asserting" dominion over some area that is not agreeable to Rhode Island, it does not follow that Rhode Island citizens, much less Rhode Island herself, is suffering "irreparable injury" by reason thereof. So far as Rhode Island herself is concerned, she is in no wise affected. She may not sue Louisiana on behalf of her fishermen, in violation of the Eleventh Amendment (Point II hereof).

Moreover, there is no allegation in Rhode Island's complaint of the lack of an adequate remedy at law; and there is a complete absence of allegations of fact showing that

Rhode Island fishermen are suffering "irreparable injury" in any respect.

The absence of any "irreparable injury" in similar situations is clearly established. In *California v. Latimer* (1938), 305 U. S. 255, an original suit in this Court seeking equitable relief was dismissed for want of equity on the ground that there was an adequate remedy at law. The State of California sued to enjoin the members of the Railroad Retirement Board from enforcing the Railroad Retirement Act against a state-owned railroad, the State Belt Railroad, claiming not to be subject to that Act. The bill asserted that the defendants had "threatened" to require complainant to keep records at "great expense" and to enforce "certain penalties" for non-compliance with the Act. The bill prayed for an injunction against enforcement of the Act and for a decree declaring it to be unconstitutional, if applied to the State Belt Railroad.

In dismissing the bill for want of equity on the ground that there were adequate remedies at law, Justice Brandeis, speaking for a unanimous Court, said:

"The defendants moved to dismiss the bill, assigning therefor nine grounds. We need consider only the objection that the bill is without equity. For we are of opinion that there was adequate opportunity to test at law the applicability and constitutionality of the Acts of Congress; and that no danger is shown of irreparable injury if that course is pursued." (305 U. S. 258, 259).

"The only 'treats' made against the complainant in connection with these sections is a ruling by the Railroad Retirement Board that the State Belt Railroad is subject to the Railroad Retirement Acts. No specific action in relation to that railroad appears to have been taken by the Board. Regulations have been prescribed under sections 8 and 10 which are simple and of a type which can be complied with largely by transcriptions from payrolls. The bill alleges that compliance with the regulations would subject the

State 'to great expense'. No supporting detail or specification is given. *Such a general statement is not an adequate basis for relief on the ground of irreparable damages.*" (305 U. S. 259, 260). (Emphasis supplied).

• • • • •

"Moreover, the Board is without power to enforce its regulations except by resort to legal proceedings, as provided in Section 10 (b) 4; and in any suit which it may institute to enforce the regulations ample opportunity is afforded to defend, on the ground that State Belt Railroad is not subject to the Railroad Retirement Acts. It is contended that the possible penalty, in case of a prosecution under Section 13, is so serious as to prevent the opportunity to defend from being an adequate remedy. Compare *Ex parte Young*, 209 U. S. 123, 165, 28 S. Ct. 441, 456, 52 L. Ed. 714, 13 L.R.A., N.S., 932, 14 Ann. Cas. 765. No prosecution has been instituted or threatened." (305 U. S. 260, 261). (Emphasis supplied).

In addition, "It is particularly desirable to decline to exercise equity jurisdiction when the result is to permit a state court to have an opportunity to determine questions of state law which may prevent the necessity of decision on a constitutional question. *City of Chicago v. Fieldcrest Dairies*, 316 U. S. 168, 173." *Burford v. Sun Oil Co.* (1943) 319 U. S. 333, note 29. In the instant case, whether Louisiana is "asserting" any dominion anywhere is a question of state law, which depends upon the construction of Louisiana statutes, and which can only be determined by the Louisiana courts.

So here (1) there is no showing of facts constituting any "irreparable injury" to Rhode Island or to any citizen thereof, and (2) questions of State law are involved. Hence, there are clear and adequate remedies at law and the bill should be dismissed for want of equity.

CONCLUSION

The motion of the State of Rhode Island for leave to file a complaint should be denied.

Respectfully submitted,

FRED S. LeBLANC,
Attorney General,
State of Louisiana;

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana;

BAILEY WALSH,
Special Assistant Attorney
General,
State of Louisiana.

Attorneys for Defendant,
State of Louisiana

January 1954.

Certificate of Service.

I, John L. Madden, Assistant Attorney General of the State of Louisiana and of counsel for said State in the above and foregoing motion, being first duly sworn, certify that I have served a copy of said motion upon each of the following named persons by mailing a copy of the motion to them, postage prepaid, prior to the filing of said motion, and at the following addresses:

Hon. William E. Powers
Attorney General of
Rhode Island
State Capitol
Providence, Rhode Island

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Edmund G. Brown
Attorney General of
California
State Building
San Francisco, California

Hon. Ivy Baker Priest
Treasurer of the
United States
Department of the Treasury
Washington, D. C.

Hon. Richard W. Ervin
Attorney General of Florida
State Capitol
Tallahassee, Florida

Hon. Herbert Brownell, Jr.
Attorney General of the
United States
Department of Justice
Washington, D. C.

Hon. George H. Humphrey
Secretary to the Treasury
Department of the Treasury
Washington, D. C.

Corcoran, Youngman and
Rowe
Attorneys at Law
1511 "K" Street, N. W.
Washington, D. C.

JOHN L. MADDEN

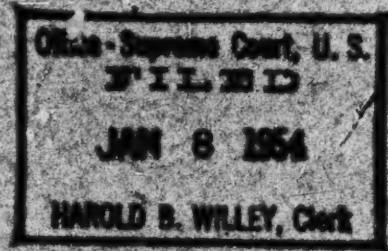
City of Washington, District of Columbia—ss.

Subscribed and sworn to before me this 27th day of
January, 1954.

BYRD C. REID

*Notary Public in and for
Said City and District*

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IN THE
Supreme Court of the United States

October Term, 1953

No. Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

vs.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

Motion for Leave to File Objections and Brief in
Opposition to Motion for Leave to File Complaint
and for Oral Hearing.

RICHARD W. ERVIN
Attorney General of Florida
HOWARD S. BAILEY
Assistant Attorney General
FRED M. BURNS
Assistant Attorney General
JOHN D. MONTAGNY
Special Assistant Attorney General
Attorneys for Movant.

**IN THE
Supreme Court of the United States**

October Term, 1953
No.....Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Complainant,

vs.

**STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,**
Defendants.

**Motion for Leave to File Objections and Brief in
Opposition to Motion for Leave to File Complaint
and for Oral Hearing.**

**The People of the State of Florida move for leave to
file objections and a brief in opposition to the motion
of the State of Rhode Island and Providence Plantations
for leave to file a complaint, and, because of the length
and complexity of the complaint and supporting brief,
request that not less than thirty (30) days be allowed
for such purpose.**

The People of the State of Florida further move the Court to set said motion of the State of Rhode Island and Providence Plantations for an oral hearing after the filing of briefs.

RICHARD W. ERVIN
Attorney General of Florida

HOWARD S. BAILEY
Assistant Attorney General

FRED M. BURNS
Assistant Attorney General

JOHN D. MORIARTY
Special Assistant Attorney General
Attorneys for Movant.

January 5, 1954

I, Pauline H. Evans, being first duly sworn, certify that I am over the age of 18 years and not a party to the within action; that on January 5, 1954, I served a copy of the foregoing Motion upon each of the following named individuals by mailing a copy of the Motion to them, postage prepaid, at the following addresses:

The Honorable Allen Shivers
Governor
State Capitol
Austin, Texas

The Honorable John Ben Shepperd
Attorney General
State Capitol
Austin, Texas

The Honorable Robert F. Kennon
Governor
State Capitol
Baton Rouge, Louisiana

The Honorable Fred S. LeBlanc
Attorney General
State Capitol
Baton Rouge, Louisiana

The Honorable William E. Powers
Attorney General
State Capitol
Providence, Rhode Island

The Honorable Goodwin Knight
Governor
State Capitol
Sacramento, California

The Honorable Edmund G. Brown
Attorney General
State Capitol
Sacramento, California

The Honorable George M.
Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

The Honorable Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

The Honorable Robert B.
Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

The Honorable Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

The Honorable Herbert
Brownell, Jr.
Attorney General
Department of Justice
Washington, D. C.

PAULINE H. EVANS

State of Florida, County of Leon—ss.

Subscribed and sworn to before me this 5th day of
January, 1954.

M. D. PHILLIPS

Notary Public, State of Florida at Large

My Commission expires July 15, 1956

Bonded by American Surety Co. of N. Y.

(Seal)

IN THE
Supreme Court of the United States
OCTOBER TERM, 1953

No. _____, Original

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF
TEXAS; STATE OF CALIFORNIA; GEORGE M. HUM-
PHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON;
IVY BAKER PRIEST.

**Motion for Leave To File Objections and Brief in
Opposition to Motion for Leave To File Complaint**

The State of Texas, by its Attorney General, asks
leave of the Court to file objections and a brief in
opposition to the motion of the State of Rhode Island
and Providence Plantations for leave to file a com-
plaint, and because of the complexity of the complaint
and brief submitted therewith, it is requested that
not less than forty-five (45) days be allowed the
State of Texas for such purpose.

JOHN BEN SHEPPERD
Attorney General of Texas

WILLIAM H. HOLLOWAY
Assistant Attorney General

January 6, 1954

CERTIFICATE OF SERVICE

I, William H. Holloway, certify that I have served a copy of the foregoing Motion upon each of the following named individuals by mailing a copy of same to them, postage prepaid, to the following addresses:

Hon. William E. Powers
Attorney General of Rhode Island
Providence County Court House
Providence, Rhode Island

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D.C.

Hon. Edmund G. Brown
Attorney General of California
State Capitol
Sacramento, California

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D.C.

Hon. Fred S. LeBlanc
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D.C.

Hon. Richard W. Ervin
Attorney General of Florida
State Capitol
Tallahassee, Florida

Hon. Herbert Brownell, Jr.
Attorney General of the
United States
Department of Justice
Washington, D.C.

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D.C.

WILLIAM H. HOLLOWAY

State of Texas, County of Travis

**Subscribed and sworn to before me this _____
day of January, 1954..**

**Notary Public in and for said
County and State.**

SUBJECT INDEX

	Page
PRELIMINARY STATEMENT	2
FIRST OBJECTION	
The Complaint Does Not State A Case Or Controversy Within The Jurisdiction Of This Court	3
Rhode Island's Principal Complaints—Relating To Alleged Threatened Injuries To Its Fishing Industry And Relating To Alleged Impairment Of Its Sovereign Status From Possible Differences In The Width Of The Belt Of Submerged Lands Affected By Public Law 31—Present Nothing More Than An Abstract Question Of International Political Power	3
Rhode Island Has No Standing In Its Sovereign Capacity To Question The Constitutionality Of Public Law 31	12
Rhode Island Is Without Standing To Question The Constitutionality Of Public Law 31 On Behalf Of Its Citizens	15
SECOND OBJECTION	
Rhode Island's Action Is In Substance And Effect Against The United States, And, Consequently, The United States Is An Indispensable Party	20
CONCLUSION	21

TABLE OF AUTHORITIES

<i>Cases</i>	<i>Page</i>
Arizona v. California, 283 U.S. 423	12
Chicago & S. Air Lines, Inc. v. Waterman Steamship Corp., 333 U.S. 103	8, 10
Coleman v. Miller, 307 U.S. 433	10
Florida v. Mellon, 273 U.S. 12	16
Foster v. Neilson, 2 Pet. 253	6
Frothingham v. Mellon, 262 U.S. 447	13
Garcia v. Lee, 12 Pet. 511	7
Georgia v. Pennsylvania R.R., 324 U.S. 439	17
Georgia v. Stanton, 6 Wall. 50	10
Hopkins Savings Ass'n v. Cleary, 296 U.S. 315	18
In re Cooper, 143 U.S. 472	3
Jones v. United States, 137 U.S. 202	8
Louisiana v. Garfield, 211 U.S. 70	20
Louisiana v. McAdoo, 234 U.S. 627	20
Massachusetts v. Mellon, 262 U.S. 447	10, 15, 19
Massachusetts v. Missouri, 308 U.S. 1	13
Minnesota v. United States, 305 U.S. 382	20
Missouri v. Holland, 252 U.S. 416	18
Missouri v. Illinois, 200 U.S. 496	11
Nebraska v. Wyoming, 325 U.S. 589	11
New Jersey v. Sargent, 269 U.S. 328	12
New York v. New Jersey, 256 U.S. 296	11
Oregon v. Hitchcock, 202 U.S. 60	20
Terlinden v. Ames, 184 U.S. 270	8
The Chinese Exclusion Case, 130 U.S. 581	10

TABLE OF AUTHORITIES

iii

	Page
United States v. Arredondo, 6 Pet. 691	7
United States v. California, 332 U.S. 19	8, 12, 15
United States v. Lynde, 11 Wall. 632	7
United States v. Reynes, 9 How. 127	7
United States v. San Francisco, 310 U.S. 16	15
United States v. Texas, 143 U.S. 621	8
United States v. Texas, 339 U.S. 707	14
Ware v. Hylton, 3 Dall. 199	10
Whitney v. Robertson, 124 U.S. 190	9
Wilson v. Shaw, 204 U.S. 24	8
Z. & F. Assets Realization Corp. v. Hull, 311 U.S. 470	8, 10

Statutes

P.L. 31, c. 65, 83rd Cong., 1st Sess., 1953	4
---	---

Miscellaneous

Field, 8 Minn. L. Rev. 485	8
Weston, 38 Harv. L. Rev. 296	9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
Complainant

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF
TEXAS; STATE OF CALIFORNIA; GEORGE M. HUM-
PHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON;
IVY BAKER PRIEST.

MOTION FOR LEAVE TO FILE OBJECTIONS

The State of Texas, by its Attorney General, asks leave of the Court to file its objections to the motion filed herein by the State of Rhode Island for leave of this Court to file its complaint against the State of Texas, the State of Louisiana, the State of Florida, the State of California, George M. Humphrey, Douglas McKay, Robert B. Anderson, and Ivy Baker Priest, which complaint is submitted therewith.

JOHN BEN SHEPPERD
Attorney General of Texas

PRELIMINARY STATEMENT

— The State of Texas appears here for the sole purpose of objecting to the motion of the State of Rhode Island and Providence Plantations for leave to file complaint.

Rhode Island's complaint and its accompanying brief in support thereof are in substance and effect, and in most instances in verbiage, identical with the complaint and arguments heretofore filed by the State of Alabama against Texas and the other states and individuals here complained of. Therefore, Texas' objections are the same in most respects.

Texas' first objection is that the complaint which Rhode Island seeks leave to file presents no case or controversy within the jurisdiction of this Court for the reasons that (1) Rhode Island's principal complaints—relating to alleged threatened injuries to its fishing industry and relating to alleged impairment of its sovereign status from possible differences in the width of the belt of submerged lands affected by Public Law 31—present nothing more than an abstract question of international political power; and (2) Rhode Island has no standing to sue in its sovereign capacity or in the capacity of quasi-sovereign or *parens patriae* because of any other reasons named in its complaint.

Texas' second objection is that leave to file Rhode Island's complaint should be denied because of the absence of the United States as a party.

FIRST OBJECTION

The Complaint Does Not State a Case or Controversy Within the Jurisdiction of This Court

Rhode Island's principal complaints—relating to alleged threatened injuries to its fishing industry and relating to alleged impairment of its sovereign status from possible differences in the width of the belt of submerged lands affected by Public Law 31—present nothing more than an abstract question of international political power

Rhode Island's most emphatic complaints are based on the same facts and argument and may be conveniently discussed in conjunction with each other. As a quasi-sovereign representative of her citizens engaged in the fishing industry, Rhode Island claims standing to sue to prevent Texas, Louisiana, and Florida from asserting rights in the Gulf of Mexico in the area between three and nine nautical miles. It is argued that such assertions, if authorized by Public Law 31, operate as an alleged repudiation of treaty obligations of the United States to limit its claims in territorial waters to a belt three miles in width from its coast, the alleged possible end result being a deprivation of rights of Rhode Island fishermen to fish in various waters within nine nautical miles of Canadian shores. (Comp., II XVII, XXVI; Br., pp. 8, 11-13, 33-35.)

And, in support of her alleged sovereign capacity to sue, Rhode Island again devotes maximum atten-

tion to possible differences in the width of the belt of submerged lands affected by Public Law 31. In this connection, complainant says that under Public Law 31 Rhode Island, unlike the three defendant states of Texas, Louisiana, and Florida, "is not permitted to extend its territorial boundaries nine nautical miles off the coast, but is limited to a belt three nautical miles * in width and to the natural resources thereunder." (Br., p. 7.) Rhode Island's complaint here is that it "is entitled to equal treatment" with Texas, Louisiana, and Florida because both "international law and determinations of the United States Government in the conduct of its foreign relations refer to the permissible width of the belt of territorial waters as three nautical miles," and because "this rule is binding equally" on Texas, Louisiana, and Florida. (Comp., ¶¶ X, XII, XIV.) Rhode Island argues that Public Law 31 should not be construed as a statutory repeal of "three-mile" treaty obligations (Br., pp. 33-35) while at the same time tacitly recognizing a clear conflict to some extent between the terms of Public Law 31 and the three-mile rule. Complainant's prayer in this connection is that Public Law 31 be declared void "to the extent that such law is construed" to confer on Texas, Louisiana, and Florida any rights in "the maritime belt lying seaward between three and nine nautical miles from the ordinary low water mark." (Comp., p. 21 "3".)

Thus, the argument presented to support both of Rhode Island's major complaints clearly demon-

*Actually, Section 4 of the Submerged Lands Act approves and confirms a seaward boundary for Rhode Island at "three geographic miles" distant from its coast line. P. L. 31, c. 65, 83rd Cong., 1st Sess., 1953.

strates that these complaints are founded on Rhode Island's interpretation of and reliance upon former rules and determinations "of the United States Government in the conduct of its foreign relations"—specifically, the three-mile territorial waters rule. Rhode Island's predicate for each of these two complaints appears to be the anomalous idea that the political departments of the United States Government, which have exclusive power over *foreign relations*, are without power to modify their former policies in any manner whatsoever for the purpose of creating and carrying out new policies of the United States with respect to the natural resources in and under the marginal sea.*

Texas submits that both of Rhode Island's arguments relating to the width of the territorial belt affected by Public Law 31 are, in the last analysis, naked challenges to the authority of the Congress and the President to conduct foreign affairs, an incident of which is the determination of national boundaries in the marginal seas, whether for the limited purposes pertaining to utilization of natural resources which are involved in Public Law 31 or for all purposes. As such, these principal complaints present non-judicial questions which can be deter-

*Rhode Island's complaint and supporting brief consistently treat the natural resources affected by Public Law 31 separately from the moneys heretofore impounded by federal officials from the proceeds of leases covering the same natural resources. But the legal nature of these "escrow" moneys in no way differs from the legal nature of the resources themselves. Had there been no production, title to the resources now represented by the impounded moneys would have passed under Section 3(a) of the Act. Hence, no analytical advantage can be served by considering these moneys separately from the resources themselves.

mined only by the legislative and executive (the "political") branches of the Government.

This Court has so reasoned in a great variety of cases, one group of which is represented by *Foster v. Neilson*, 2 Pet. 253 (1829). In that case each party asserted a title to the same tract of land in Louisiana, the plaintiff alleging a title based on a Spanish grant during 1804. The defense was that such Spanish grants were void due to the fact that Spain had ceded the entire area between the Perdido and Iberville Rivers to France by the Treaty of St. Ildefonso (by which Spain had ceded Louisiana to France) and that this disputed area was acquired by the United States from France in the Louisiana Purchase in 1803. The meaning of the crucial provision of the Treaty, which controlled the lawsuit, was conceded by the Court to be ambiguous and was recognized by the Court to have been the subject of a lengthy dispute between the governments of Spain and the United States, the Spanish construction favoring plaintiff and the American construction favoring defendant.

In affirming a dismissal of the suit, Chief Justice Marshall pointed out that

"In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they cannot adjust their differences peaceably, the right remains with the strongest. The judiciary is not that depart-

ment of the government to which the assertion of its interests against foreign powers is confided . . ." (2 Pet. at 307.)

And, after observing the various congressional acts respecting the disputed area, the Court added:

" . . . If those departments which are intrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its rights of dominion over a country which is in its possession, and which it claims under a treaty; if the legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this respecting the boundaries of nations is, as has been truly said, more a political than a legal question; and in its discussion, the courts of every country must respect the pronounced will of the legislature." (*Id.* at 309.)

Subsequent decisions reiterate that national boundary matters present political questions for the executive and legislative departments and that a determination by these "political" departments is binding on the courts. *United States v. Arredondo*, 6 Pet. 691, 711 (1832); *Garcia v. Lee*, 12 Pet. 511, 516 (1838); *United States v. Reynes*, 9 How. 127, 154 (1849); *United States v. Lynde*, 11 Wall. 632, 643 (1870). Insofar as the political, or non-judicial, nature of national boundary making is concerned, these decisions have been properly distinguished from those relied on by Rhode Island which involve only questions of internal boundary between states or be-

tween a state and the United States. See *United States v. Texas*, 143 U.S. 621, 639 (1892).*

Likewise, this Court in *United States v. California*, 332 U.S. 19, 34 (1947), with reference to the identical international frontier here involved, acknowledged the binding effect upon the judiciary of assertions by the political departments of dominion over the marginal seas and the binding effect of delineations by those departments of the geographical limits of such dominion. The Court's reliance upon the principles approved in *Jones v. United States*, 137 U.S. 202, 212-214 (1890), and *In re Cooper*, 143 U.S. 472, 502-503 (1902), supports Texas' conviction that questions of boundary making in the marginal sea are indistinguishable from foreign relations issues in general and that the determination of all such issues by the political departments conclusively binds the courts and removes those questions from the scope of judicial power delegated by Article III of the Constitution. *Chicago & S. Air Lines, Inc. v. Waterman Steamship Corp.*, 333 U.S. 103, 111 (1948); *Z. & F. Assets Realization Corp. v. Hull*, 311 U.S. 470, 490 (1941) (Concurring opinion); *Wilson v. Shaw*, 204 U.S. 24, 32 (1907); *Terlinden v. Ames*, 184 U.S. 270, 283 (1902). See Field, *The Doctrine of Political Questions In The Federal Courts*, 8 Minn.

*If any further distinction of Rhode Island's internal boundary cases is required, it should be noted that each of them concerned a boundary of the complaining state—a matter of immediate and special interest to it—whereas, in the present case, Rhode Island is complaining about certain boundaries of Texas, Louisiana, and Florida—boundaries that have nothing whatever to do with Rhode Island's jurisdiction.

L. Rev. 485, 494-502 (1924); Weston, *Political Questions*, 38 Harv. L. Rev. 296, 315-316 (1925).

Rhode Island's concluding argument in support of its two main complaints is that assertions by Texas, Louisiana, and Florida of rights beyond the three-mile boundary are "a violation of international treaties" and that Congress' clear language in Public Law 31, releasing and confirming in the states certain rights and titles within historic seaward boundaries located within three marine leagues in the Gulf of Mexico, should not be construed to authorize any assertions beyond a three-mile boundary. This argument is obviously motivated by Rhode Island's strong preference for the national policies implemented by these treaties rather than the national policies which are implemented by Public Law 31. In any event, the argument further illustrates the non-judicial character of the questions raised in these two complaints.

In the first place, the power to decide whether the terms of Public Law 31 actually violate any international treaty is not a question for this Court. If the governments with which the alleged treaties exist are dissatisfied with this action of Congress — if they rather than Rhode Island are unable to rationalize the limited powers conferred by Public Law 31 beyond the three-mile boundary with the terms of our various diplomatic commitments to them — then those governments may complain or act to protect themselves. And, in such circumstances, it has long been settled that "whether the complaining nation has just cause of complaint" is not a matter for judicial determination. *Whitney v. Robertson*, 124 U.S.

190, 194 (1888). Cf. *Ware v. Hylton*, 3 Dall. 199, 260-261 (1796) (Opinion of Iredell, J.). But even conceding that certain treaties or other diplomatic agreements were in fact repudiated by congressional authority as exercised in Public Law 31, no judicial issue is presented. As stated in *The Chinese Exclusion Case*, 130 U.S. 581, 602 (1889):

"The question whether our government is justified in disregarding its engagements with another nation is not one for the determination of the courts."

Since it is the ultimate responsibility of this Court to determine who may invoke its jurisdiction and under what circumstances, it is well within the Court's power to dismiss for lack of jurisdiction any action before it which presents only political questions. *Chicago & S. Air Lines, Inc. v. Waterman Steamship Corp.*, 333 U.S. 103 (1948); *Massachusetts v. Mellon*, 262 U.S. 447 (1923); *Georgia v. Stanton*, 6 Wall. 50 (1867). See *Coleman v. Miller*, 307 U.S. 433, 456, 460 (1939) (Concurring opinions); *Z. & F. Assets Realization Corp. v. Hull*, 311 U.S. 470, 490 (Concurring opinion).

That the Court should exercise judicial self-limitation in this instance and should deny Rhode Island leave to file is manifest from the action of the Court in respect to analogous political questions discussed above.

One other point involved in Rhode Island's primary argument as to her standing to sue should be noticed. Even if it were assumed that the complaint

relating to the Rhode Island fishing industry were not predicated on decisions exclusively within the province of the political departments, still that complaint fails to state a "case or controversy" within the cognizance of this Court. Allegations and accompanying arguments that economic interests of its citizens are in jeopardy because Rhode Island is "fearful" that the claims or actions of Texas and other states will "invite" retaliatory claims by Canada, which "might" take the form of total exclusion or "may result" in a policy of discriminatory license fees, are patently insufficient. (Comp., § XXVI; Br., p. 34.) No injury, actual or threatened, is shown.

By its own language Rhode Island shows that any fear of injury to Rhode Island or its citizens is based purely upon supposition and speculation as to the possible effects that might result if a foreign power should seize upon this Act of the Congress as an excuse to repudiate a treaty with the United States. The Court has frequently emphasized that a suit between states "should be of serious magnitude, clearly and fully proved" before it will take jurisdiction. *Missouri v. Illinois*, 200 U.S. 496, 521 (1906); *New York v. New Jersey*, 256 U.S. 296, 309 (1921).

Further, this Court has expressly recognized that a mere potential threat of injury based upon "assumed potential invasions" of rights of a state or its people does not state a "case or controversy" of which the court may take cognizance in a suit between states or in a suit to invalidate an act of Congress. *Nebraska v. Wyoming*, 325 U.S. 589, 606

(1945); *Arizona v. California*, 283 U.S. 423, 462-464 (1931); *New Jersey v. Sargent*, 269 U.S. 328, 338 (1925).

Clearly, Rhode Island's complaint concerning possible injury to its citizen fishermen, when measured by the rules pronounced by this Court, falls far short of stating a "case or controversy."

Rhode Island Has No Standing In Its Sovereign Capacity To Question The Constitutionality Of Public Law 31

That a state as a sovereign has no authority to question the provisions of Public Law 31 relating to the extent of the territorial belt established for the purpose of developing the natural resources in and under the marginal sea was recognized in principle in *United States v. California*, 332 U.S. 19, 35 (1947), where the Court said:

"... whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units."

Therefore, any rights asserted by Texas under Public Law 31 to the natural resources in and under the portion of the marginal sea within its historic boundaries could not possibly be in derogation of the rights, if any, of the State of Rhode Island, whatever the nature of the rights claimed by Rhode Island. The extent of the territorial belt in which

Texas asserts its rights to the natural resources is a matter solely between Texas and the federal government. It is submitted, therefore, that no legal rights of Rhode Island have been invaded by the alleged assertions of Texas.

Under such circumstances it is clear that Rhode Island's complaint presents no actual controversy for determination by this Court. As stated in *Massachusetts v. Missouri*, 308 U.S. 1, 15 (1939), for there to be a justiciable controversy "it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence."

Even if it could be said that Rhode Island has suffered injury by the alleged acts of the State of Texas under Public Law 31, it is apparent that this injury is one that is suffered by Rhode Island in common with all the other states of the Union and therefore affords no basis for the action which Rhode Island seeks to bring. This principle was established in *Frothingham v. Mellon*, 262 U.S. 447, 488 (1923), where it was said:

"... We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascer-

taining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

Rhode Island argues further that its sovereign interests are adversely affected by the claims of Texas, Louisiana, Florida, and California with respect to all the natural resources in and under all portions of the marginal sea, including the area within three miles from shore. The basis of this additional contention is the idea that national sovereign interests have been actually and improperly delegated to these states by Public Law 31, because it is alleged that national sovereign interests are inseparably tied to and therefore must follow the proprietary interests expressly confirmed in the states by Public Law 31. (Comp., 1 XXIX; Br., pp. 17-18.) This idea appears to be derived from Rhode Island's construction of this Court's holding in *United States v. Texas*, 339 U.S. 707 (1950). Texas denies that the holding of the Court in that case is properly subject to the construction which Rhode Island seeks to place upon it.

However, even if the opinion of the Court in the Texas case were properly susceptible of that construction, Texas is unable to perceive how this would

confer any sovereign capacity to complain on the State of Rhode Island, a purely local sovereign. Even if it could be said that these property rights in and to the natural resources of the marginal sea are inseparable from the national sovereign, the national sovereign would hold these rights for the benefit of all the people and not for the individual states as such. This was expressly recognized in the opinion of this Court in *United States v. California*, 332 U.S. 19, 40, where, in reference to the identical interests here involved, it was said that "the Government . . . holds its interests here *as elsewhere* in trust for *all the people*." (Emphasis added.) Rhode Island's status as a local sovereign in no way gives it any standing to bring a suit to enforce rights held for "all the people." If there is any such "trust" for "all the people," Congress alone may determine how it shall be enforced and administered. *United States v. San Francisco*, 310 U.S. 16, 29-30 (1940).

*Rhode Island Is Without Standing To Question
The Constitutionality of Public Law 31, On
Behalf Of Its Citizens*

Assuming, *arguendo*, that the requisite injury to Rhode Island citizens by the enactment of Public Law 31 were established, the State of Rhode Island would have no standing to enforce rights of its citizens by challenging the constitutionality of the Act. Such an action is precluded by prior decisions of this Court.

In *Massachusetts v. Mellon*, 262 U.S. 447 (1923), this Court held that an attack upon the constitution-

ality of a federal statute by a state on behalf of its citizens is not a "justiciable controversy." There, Massachusetts, asserting that it had standing to bring the suit in its sovereign capacity and also in a capacity of representative or as *parens patriae* of its citizens, sought to challenge the constitutionality of the Maternity Act. In denying the right of Massachusetts to bring the suit, the Court said:

"... But the citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a State, as *parens patriae*, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof. While the State, under some circumstances, may sue in that capacity for the protection of its citizens (*Missouri v. Illinois*, 180 U.S. 208, 241), it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." (262 U.S. at 485-486.)

This principle that a state does not have standing to attack the validity of a federal statute on behalf of its citizens was reiterated and strengthened by this Court in *Florida v. Mellon*, 273 U. S. 12 (1927). In that case, Florida sought to attack the constitutionality of a federal inheritance tax law, suing as representative of its citizens. Even though it was pointed out that there were only three states whose citizens could be adversely affected by this federal

statute and that there was no way in which Florida could secure the same benefits for its citizens as were given citizens of other states (273 U. S. at 16), the Court said:

"Nor can the suit be maintained by the state because of any injury to its citizens. They are also citizens of the United States and subject to its laws. In respect of their relations with the federal government 'it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status.' *Massachusetts v. Mellon*, *supra*, pp. 485-486." (273 U. S. at 18.)

Rhode Island relies heavily upon *Georgia v. Pennsylvania R. R.*, 324 U. S. 439 (1945), in an attempt to escape the application of the principle clearly enunciated in *Massachusetts v. Mellon* and *Florida v. Mellon*. But *Georgia v. Pennsylvania R. R.* did not involve an attack by the State of Georgia on behalf of its citizens upon the constitutionality of a federal statute. In fact, it was just the opposite. There, Georgia was asserting rights based on a federal statute in seeking to protect its citizens from a price-fixing conspiracy, while here Rhode Island is attacking the validity of a federal statute.

It is significant that in *Georgia v. Pennsylvania R. R.* the Court expressly recognized this distinction between an "attack" upon a federal statute and a suit "based" on a federal statute. In categorizing the cases not within its original jurisdiction and dis-

tinguishing the case before it from *Massachusetts v. Mellon* and *Florida v. Mellon*, the Court said:

"... Moreover, *Massachusetts v. Mellon*, and *Florida v. Mellon*, *supra*, make plain that the United States, not the State, represents the citizens as *parens patriae* in their relations to the Federal Government.

"The present controversy, however, does not fall within any of those categories. This is a civil, not a criminal, proceeding. Nor is this a situation where the United States rather than Georgia stands as *parens patriae* to the citizens of Georgia. This is not a suit like those in *Massachusetts v. Mellon* and *Florida v. Mellon*, *supra*, where a State sought to protect her citizens from the operation of federal statutes. Here Georgia asserts rights based on the anti-trust laws." (324 U. S. at 446-447.)

Unlike *Georgia v. Pennsylvania R. R.*, this suit by Rhode Island on behalf of its citizens is one in which a state is attempting to protect its citizens from the effect of a federal statute, as was the case in *Massachusetts v. Mellon* and *Florida v. Mellon*. Consequently, this is an attempt by Rhode Island to represent its citizens in their relations with the federal government. This Rhode Island cannot do. In regard to these relations, the United States, not Rhode Island, stands as *parens patriae* to the citizens of Rhode Island.

Rhode Island also contends (Br., pp. 16-17) that *Missouri v. Holland*, 252 U. S. 416 (1920), and *Hopkins Savings Ass'n v. Cleary*, 296 U. S. 315 (1935),

show that a state has standing as representative of its citizens to challenge the constitutionality of a federal statute. But neither of these cases detracts from nor weakens the clear holdings of *Massachusetts v. Mellon* and *Florida v. Mellon*.

Missouri v. Holland was decided prior to the *Massachusetts* case and was there considered by the Court to be a suit, not on behalf of citizens, but to prevent an invasion of the right of Missouri to regulate the taking of wild game within its borders. See *Massachusetts v. Mellon*, 262 U. S. 447, 482 (1923). And in the *Hopkins Savings* case, the Court noted a patent distinction from the facts of the *Massachusetts* case as follows:

"... The ruling [*Massachusetts v. Mellon*] was that it was no part of the duty or power of a state to enforce the rights of its citizens in respect of their relations to the Federal Government. Cf. *Florida v. Mellon*, 273 U. S. 12. Here, on the contrary, the state becomes a suitor to protect the interests of its citizens against the unlawful acts of corporations created by the state itself." (296 U. S. at 341.)

Texas submits that the principle that the United States, not the state, represents citizens in their relations with the federal government has been strengthened, rather than weakened, by subsequent cases, and that Rhode Island's suit on behalf of its citizens falls squarely within that principle and is controlled by it.

SECOND OBJECTION

**Rhode Island's Action Is in Substance and Effect
Against The United States, and, Consequently,
The United States Is an Indispensable Party**

The essence of Rhode Island's complaint is a challenge to the authority of the United States, under Public Law 31, to dispose of its title and proprietary interest in lands, minerals, and other natural resources of the marginal sea. All of the relief sought by Rhode Island directly involves the national sovereign's paramount rights, dominion, and power over this property. Under these circumstances, it is clear that the United States is a real party in interest since the nature of its tenure is controlling.

The Court has consistently held that in deciding whether a suit involving title or property rights is actually one against the United States, the pleadings must be tested by considering whether the relief sought, if granted, would determine rights of the United States. *Oregon v. Hitchcock*, 202 U. S. 60 (1906); *Louisiana v. Garfield*, 211 U. S. 70 (1908); *Minnesota v. United States*, 305 U. S. 382 (1939).

Such being the rule, it is apparent that the United States is the real and substantial defendant in the present case. Since the United States has given no consent in this instance and the complaint would have to be dismissed if permitted to be filed, the Court should deny leave to file the complaint. *Louisiana v. McAdoo*, 234 U. S. 627, 628 (1914).

CONCLUSION.

The complaint states no case or controversy within the jurisdiction of this Court since its main points present only a political question and its allegations as a whole fail to show that Rhode Island has standing to sue either as sovereign or on behalf of its citizens. Furthermore, jurisdiction should not be taken because the United States is an indispensable party and has not been joined.

WHEREFORE, the motion for leave to file the complaint should be denied.

Respectfully submitted,

JOHN BEN SHEPPERD
Attorney General of Texas


ROBERT S. TROTTI
First Assistant Attorney General

JESSE P. LUTON, JR.
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January, 1954



CERTIFICATE OF SERVICE

I, William H. Holloway, certify that I have served a copy of the foregoing motion for leave to file objections and objections of State of Texas to motion of State of Rhode Island and Providence Plantations for leave to file complaint on the following named individuals by mailing a copy of same to them, postage prepaid, to the following addresses:

Hon. William E. Powers
Attorney General of Rhode Island
Providence County Court House
Providence, Rhode Island

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D.C.

Hon. Edmund G. Brown
Attorney General of California
State Capitol
Sacramento, California

Hon. Robert B. Anderson
Secretary of the Navy
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Hon. Fred S. LeBlanc
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**Subscribed and sworn to before me this
day of January, 1954.**

**Notary Public in and for said
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INDEX

	Page
Statement.....	2
Argument.....	4
I. The fishing rights of Rhode Island citizens under Canadian treaties do not entitle the State to bring this action in their behalf as <i>parens patriae</i>	4
A. The fishing rights of Rhode Island citizens off Canadian shores are not endangered.....	4
B. The State cannot represent its citizens as <i>parens patriae</i> in their relations with the Federal Government.....	7
C. The feared impairment of Rhode Island citizens' fishing rights would be too remote a consequence of defendants' acts to justify relief.....	7
D. The performance by the United States of its treaty obligations is a political matter and not justiciable.....	10
II. The submerged lands and resources are disposable by Congress under the Constitution.....	14
Conclusion.....	23

CITATIONS

Cases:

<i>Alabama v. Arizona</i> , 291 U. S. 286.....	6
<i>Alabama Power Co. v. Ickes</i> , 302 U. S. 464.....	8
<i>Appleby v. City of New York</i> , 271 U. S. 364.....	17
<i>Ashwander v. Tennessee Valley Authority</i> , 297 U. S. 288.....	10, 29
<i>Barney v. Keokuk</i> , 94 U. S. 324.....	16
<i>Barrows v. Jackson</i> , 346 U. S. 249.....	9
<i>Charlton v. Kelly</i> , 229 U. S. 447.....	11
<i>Chinese Exclusion Case, The</i> , 130 U. S. 581.....	11
<i>Clark v. Allen</i> , 331 U. S. 503.....	11
<i>Connecticut v. Massachusetts</i> , 282 U. S. 660.....	6
<i>Davis & Farnum Mfg. Co. v. Los Angeles</i> , 189 U. S. 307.....	9
<i>Donnelly v. United States</i> , 228 U. S. 243.....	16, 17
<i>Florida v. Mellon</i> , 273 U. S. 12.....	7
<i>Fong Yue Ting v. United States</i> , 149 U. S. 698.....	11
<i>George E. Warren Corporation v. United States</i> , 94 F. 2d 597, certiorari denied, 304 U. S. 572.....	12
<i>Georgia v. Pennsylvania R. Co.</i> , 324 U. S. 439.....	7
<i>Louisiana v. McAdoo</i> , 234 U. S. 627.....	10
<i>Marye v. Parsons</i> , 114 U. S. 325.....	9
<i>Massachusetts v. Mellon</i> , 262 U. S. 447.....	7
<i>Missouri v. Holland</i> , 252 U. S. 416.....	7
<i>Mobile Transportation Co. v. Mobile</i> , 187 U. S. 479.....	17

Cases—Continued

	Page
<i>Murrian v. Work</i> , 266 U. S. 481	9
<i>Moor v. United States</i> , 341 U. S. 41	11
<i>New v. Illinois</i> , 274 U. S. 488	6
<i>New Jersey v. Sargant</i> , 200 U. S. 628	6
<i>Oklahoma v. Texas</i> , 258 U. S. 574	17
<i>Pearson v. Pearson</i> , 108 Fed. 461	10, 12-14
<i>Perkins v. Lukens Steel Co.</i> , 310 U. S. 113	9
<i>Pollard's Lessee v. Hagen</i> , 3 How. 212	16
<i>Port of Seattle v. Oregon & W. R. R.</i> , 255 U. S. 56	17
<i>Scott v. Lottig</i> , 227 U. S. 229	17
<i>Shively v. Bowlby</i> , 152 U. S. 1	18
<i>Shirley v. Florida</i> , 313 U. S. 69	12
<i>United Gar Co. v. Railroad Comm'n</i> , 278 U. S. 300	8
<i>United States v. California</i> , 332 U. S. 19	16, 17, 20, 21, 22, 23
<i>United States v. California</i> , 332 U. S. 804	19, 20
<i>United States v. Dern</i> , 289 U. S. 352	17
<i>United States v. Holt Bank</i> , 270 U. S. 49	17
<i>United States v. Louisiana</i> , 340 U. S. 899	19
<i>United States v. Oregon</i> , 295 U. S. 1	17
<i>United States v. Texas</i> , 339 U. S. 707	17, 18
<i>United States v. Texas</i> , 340 U. S. 900	19
<i>United States v. Utah</i> , 283 U. S. 64	17
<i>United States v. Willow River Co.</i> , 324 U. S. 449	17
<i>Warren Corporation, George E. v. United States</i> , 94 F. 2d 597, certiorari denied, 304 U. S. 572	12
<i>Weber v. Harbor Commissioners</i> , 18 Wall. 57	17
Constitution, Statutes, Treaties and Proclamation:	
Constitution of the United States:	
Article I, Section 8, Clause 17	18
Article IV, Section 3	15, 16, 22
Outer Continental Shelf Lands Act, 67 Stat. 462 (Act of August 7, 1953)	23
Submerged Lands Act (Public Law 31, 83d Cong., 1st Sess.), c. 65	2
Treaty of Paris, September 3, 1783 (8 Stat. 80), Article III.	5
Treaty of October 20, 1818 (8 Stat. 248), Article I.	3, 5
Treaty of May 8, 1871, 17 Stat. 863	12
Treaty of January 23, 1924 (43 Stat. 1761)	3, 6
Continental Shelf Proclamation (Proclamation No. 2667 of Sept. 28, 1945, 59 Stat. 824)	23
Miscellaneous:	
V. Moore, <i>Digest of International Law</i> , 566	11
I North Atlantic Coast Fisheries Arbitration (71 S. Docs., No. 570, 61st Cong., 3d Sess.), Award of the Tribunal, 92-97	5
39 Op. Atty. Gen. 484	19

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. —, Original

**STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS, COMPLAINANT**

v.

**STATE OF LOUISIANA, STATE OF FLORIDA, STATE OF
TEXAS, STATE OF CALIFORNIA, GEORGE M. HUMPHREY,
DOUGLAS MCKAY, ROBERT B. ANDERSON,
IVY BAKER PRIEST, DEFENDANTS**

**OPPOSITION OF DEFENDANTS GEORGE M. HUMPHREY,
DOUGLAS MCKAY, ROBERT B. ANDERSON, AND IVY BAKER
PRIEST TO COMPLAINANT'S MOTION FOR LEAVE TO FILE
COMPLAINT**

Defendants George M. Humphrey, Douglas McKay, Robert B. Anderson, and Ivy Baker Priest oppose the complainant's motion for leave to file its complaint against said defendants, on the following grounds:

1. The complainant has no standing to sue;
2. The complaint fails to state a claim on which relief can be granted against these defendants;
3. The suit is, in legal effect, one against the United States, which has not consented to be sued; and
4. The United States is an indispensable party.

STATEMENT

The State of Rhode Island, as complainant, seeks to invoke the original jurisdiction of this Court in a proceeding similar to that sought to be instituted against the same defendants in the case of *State of Alabama v. State of Texas, et al.*, now before this Court on the complainant's application for leave to file its complaint and the defendants' objections thereto. With certain exceptions noted below, the complaint contains substantially the same allegations as those presented by Alabama and prays for the same relief. See the Statement in our Opposition in the *Alabama* case, pp. 2-3. In summary, Rhode Island claims that the Submerged Lands Act (Public Law 31, 83d Congress, 1st Session, c. 65) is unconstitutional and that the assertions of jurisdiction and control by the defendant States over the land, mineral and natural resources of the subsoil and seabed seaward of the low water mark off their coasts, and the "acquiescence" of the Federal officials in such claims, infringe the rights of Rhode Island as a sovereign state and the rights of its citizens which it seeks to protect as *parens patriae*. It is alleged that the defendant Federal officials intend to turn over to some of the defendant States certain revenues which have accrued from the submerged lands. Complaint is also made of the assertion of jurisdiction by the Gulf States over territory beyond the three mile limit. The complainant seeks a declaration

of unconstitutionality of the Submerged Lands Act and an injunction against the acts complained of.

Rhode Island does not allege, as did Alabama (Alabama's Complaint, paragraphs XII, XV, XVIII, XX, XXIV, XXVII, XXX, and XXXVI), that the defendant States are interfering with the rights of its citizens to fish in the Gulf of Mexico. Instead, Rhode Island alleges, as an additional ground in support of its standing to sue as *parens patriae*, that its citizens engage extensively in commercial fishing off the coasts of Canada and Newfoundland, where they, in common with other citizens of the United States, have a right to fish outside territorial limits mutually fixed at three miles by treaties of October 20, 1818, and January 23, 1924 (Complaint, Paragraph XVII, page 10); that the assertion by Louisiana, Florida and Texas of territorial jurisdiction of more than three miles in the Gulf of Mexico is a repudiation of the United States' treaty obligation to limit its claim to three miles, which will release Canada from its obligation similarly to limit its territorial waters, and thus will jeopardize the fishing rights of Rhode Island citizens off the Canadian coast (Complaint, Paragraph XXVI, page 16); and that Rhode Island sues as *parens patriae* for its citizens whose livelihood is thus threatened (Complaint, Paragraph XXXII, page 18).

ARGUMENT

The Argument included in our Opposition to Alabama's Motion for Leave to File is equally applicable to the Complaint and Brief in this case. In order to avoid repetition, the Court is respectfully referred to the Argument in that case, pages 5 to 42.

There are two matters raised by Rhode Island which are not directly dealt with in the *Alabama* case: (a) the assertion that citizens of Rhode Island have some basis for complaint because of the alleged effect of the Submerged Lands Act, taken together with the boundary claims of the defendant States, on fishing rights off the coast of Canada (Br. pp. 11-13), and (b) the argument that the submerged lands and resources are not "property" which may be disposed of by Congress under the authority of Article IV, Section 3 of the Constitution (Br. pp. 20-28).

I. THE FISHING RIGHTS OF RHODE ISLAND CITIZENS UNDER CANADIAN TREATIES DO NOT ENTITLE THE STATE TO BRING THIS ACTION IN THEIR BEHALF AS PARENS PATRIAE

A. THE FISHING RIGHTS OF RHODE ISLAND CITIZENS OFF CANADIAN SHORES ARE NOT ENDANGERED

At the outset, it is well to point out the insubstantiality of Rhode Island's claim of danger to the fishing rights of its citizens off the Canadian coast. The consequences which Rhode Island predicts (*supra*, p. 3) would not follow even if there were a breach by the United States of a

treaty obligation to limit its territorial waters to three miles. What Rhode Island attempts is to treat unrelated treaties—concerning fishing rights, on the one hand, and the three mile maritime belt, on the other—as *in pari materia*, so that a breach of one by the United States would entitle Canada to abrogate the other.¹

Article III of the Treaty of Paris, September 3, 1783 (8 Stat. 80, 82), recognized the right of citizens of the United States to fish everywhere off the coasts of British North America. By Article I of the Treaty of October 20, 1818 (8 Stat. 246), the United States relinquished that right within three miles of all bays and of the coast except certain coasts of Labrador and Newfoundland. Neither treaty refers to the limit of territorial waters, contains any undertaking by the United States on that subject, or provides for any fishing rights of British fishermen off the coasts of the United States. It is clear that the operation and continuance of the 1818 treaty are wholly independent of any general agreement between Canada and the United States as to the width of territorial waters. As to most of the Labrador and Newfoundland coasts it permits

¹ It is not to be assumed from this discussion that we agree that the Submerged Lands Act necessarily permits the Gulf Coast States to have a maritime belt wider than three miles. As pointed out in our Opposition in *Alabama's case* (pp. 31-32), the Act purports to permit a three-league boundary in the Gulf of Mexico only if such a boundary is consistent with historic practice and understanding.

fishing all the way up to the shore; on the other hand, the exclusion from "bays" has been held to refer even to bays which are high seas and outside the territorial limits of Canada. I *North Atlantic Coast Fisheries Arbitration* (71 S. Docs., No. 870, 61st Cong., 3d Sess.), Award of the Tribunal, 92-97.

It was more than a century after that treaty of 1818 that the United States and Britain entered into the Treaty of January 23, 1924, mutually recognizing three miles as the limit of territorial waters (43 Stat. 1761). The primary purpose of the latter treaty was to permit the United States to take certain measures against liquor smuggling outside territorial waters; it made no reference to fishing rights and in no way purported to modify or affect the special agreement as to American fishing rights made by the Treaty of 1818. Thus, no breach of the 1924 treaty provision regarding territorial limits would justify Canada in abrogating the wholly separate Treaty of 1818 by which fishing rights were long previously guaranteed, independently of territorial limits. And, in fact, Rhode Island gives no reason for believing that Canada would be sufficiently concerned with the establishment of a three-league boundary in the Gulf of Mexico—if that were a breach of the 1924 treaty—to attempt to abrogate the fishing treaty. Cf. *Alabama v. Arizona*, 291 U. S. 286, 291-2; *New York v. Illinois*, 274 U. S. 488; *New Jersey v. Sargent*, 269 U. S. 328, 337-340; *Connecticut v. Massachusetts*, 282 U. S. 660, 669 ff.

B. THE STATE CANNOT REPRESENT ITS CITIZENS AS PARENS PATRIAE IN THEIR RELATIONS WITH THE FEDERAL GOVERNMENT

Quite apart from their lack of substantive merit, the allegations of Rhode Island do not entitle it to maintain this suit. In asserting claims of its citizens under a federal treaty and the federal Constitution against federal officials, Rhode Island clearly seeks to represent its citizens "respecting their relations with the Federal Government." But for such representation citizens must look to the Federal Government and not to the States as *parens patriae*. *Massachusetts v. Mellon*, 262 U. S. 447, 485-486; *Florida v. Mellon*, 273 U. S. 12, 18. In this aspect, the case is not like one where a State sues federal officials in its own behalf (e. g., *Missouri v. Holland*, 252 U. S. 416) or as *parens patriae* asserts federal rights of its citizens against third persons (e. g., *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439). Here, the State seeks to represent its citizens in asserting federal rights under the Constitution against federal officials; and that, this Court has held, it cannot do.

C. THE FEARED IMPAIRMENT OF RHODE ISLAND CITIZENS' FISHING RIGHTS WOULD BE TOO REMOTE A CONSEQUENCE OF DEFENDANT'S ACTS TO JUSTIFY RELIEF

Even if the fishing rights of Rhode Island citizens were threatened as alleged, and the interests of those citizens were presented here by an appropriate representative, still no ground for relief

would be stated against the individual defendants in this respect because these defendants are neither doing nor threatening to do any act which violates any duty owed to the Rhode Island fishermen or which invades any of their rights. "Suitors may not resort to a court of equity to restrain a threatened act merely because it is illegal or transcends constitutional powers. They must show that the act complained of will inflict upon them some irreparable injury." *United Gas Co. v. Railroad Com'n*, 278 U. S. 300, 310. And the injury must be a direct one to a legally protected interest of the complaining party. It is not enough to show that the act sought to be enjoined will redound in some way to the disadvantage of the plaintiff; equity will not enjoin it unless it directly invades the plaintiff's legal rights. Thus, a power company was held to have no standing to seek to enjoin the Secretary of the Interior from making allegedly illegal loans to municipalities to enable them to engage in lawful competition with the company. *Alabama Power Co. v. Ickes*, 302 U. S. 464. Similarly, a subcontractor who had undertaken to build a gas tank for a prime contractor, on land the owner of which had secured a construction permit, had no standing to seek to enjoin, as an unconstitutional breach of the city's agreement with the landowner, enforcement of a subsequent ordinance zoning the land against such a structure. The

plaintiff had no contract with the city, nor even with the landowner. Such a plaintiff "stands practically in the position of one who seeks to take advantage of the unconstitutionality of a law in which it has only an indirect interest, and by the enforcement of which it has suffered no legal injury." *Davis & Farnum Mfg. Co. v. Los Angeles*, 189 U. S. 207, 230. Again, where state officials unlawfully refused to receive coupons of state bonds in payment of taxes, a bondholder who was not a taxpayer could not enjoin such conduct even though it destroyed the market value of his bonds. "This damage is not actionable, because it is not a direct and legal consequence of a breach of the contract * * *." *Marge v. Parsons*, 114 U. S. 325, 329. Cf. *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 125; *Morrison v. Work*, 266 U. S. 481, 490; *Barrows v. Jackson*, 346 U. S. 249, 255-256.

So here, the action of these defendants which Rhode Island seeks to enjoin is, at the very most, interference with treaty rights of Canada or Canadians in the Gulf of Mexico. There is no direct infringement by the defendants on the fishing rights of Rhode Islanders. And, obviously, Rhode Island does not stand as *parens patriae* for Canadians; nor is Rhode Island given standing to sue to protect their rights merely by the possibility that interference with them might ultimately lead, through possible retaliation by

Canada,' to consequences detrimental to interests of Rhode Island citizens.'

B. THE PERFORMANCE BY THE UNITED STATES OF ITS TREATY OBLIGATIONS IS A POLITICAL MATTER AND NOT JUSTICIABLE

Finally, it should be pointed out that Rhode Island's concern with the continued effectiveness of the fisheries treaty with Canada presents a purely political, and not a justiciable, issue to this Court. The action of the individual defendants which is sought to be enjoined, in this connection, is "acquiescence" in the claims of Florida, Louisiana and Texas to marginal belts greater than three miles (Complaint, Paragraph XXVIII, page 17; Prayer, paragraph 6, page 22). It is not alleged that such "acquiescence" will in itself invade any rights of Rhode Island or its citizens under the Canadian treaties, but only that it will violate a duty owed by the United States to Canada. In other words, Rhode Island simply insists that it can call upon this Court to

¹ But see *supra*, p. 6.

² A somewhat similar situation was presented in *Louisiana v. McAdoo*, 234 U. S. 937, where Louisiana, as a domestic producer of sugar, sought to improve its position with respect to Cuban competition by compelling the Secretary of the Treasury to collect on Cuban sugar a higher tariff than he was doing, as plaintiff alleged to be required by a treaty between the United States and Cuba. The case was decided on the ground that it was a suit against the United States, but this Court clearly indicated its view that the plaintiff had no standing to enforce in that way the treaty provision relied on. 234 U. S. at 931-932. See also *Pearson v. Pearson*, 108 Fed. 461 (C. C. E. D. La.), discussed in footnote 5, *infra*, p. 12.

take action to prevent the United States from committing an alleged breach of an international obligation.

But how or whether the United States is to perform its treaties is a matter to be determined by the Executive or the Congress, not by the courts.* "A treaty is primarily a compact between independent nations, and depends for the enforcement of its provisions on the honor and the interests of the governments which are parties to it. If these fail, its infraction becomes the subject of international reclamation and negotiation, which may lead to war to enforce them. With this judicial tribunals have nothing to do." *Charlton v. Kelly*, 235 U. S. 447, 474, quoting *V Mbore, Digest of International Law*, 566. "The question whether our government is justified in disregarding its engagements with another nation is not for the determination of the courts." *The Chinese Exclusion Case*, 130 U. S. 581, 602. "It is not for a court to say whether a treaty has been broken or what remedy shall be given; this is a matter of international concern, which the two sovereign states must determine by diplomatic exchanges, or by such other means as enables one state to force upon another the obligations of a

* It is settled that a subsequent statute takes precedence over a prior treaty with which it is in conflict. *The Chinese Exclusion Case*, 130 U. S. 581, 600, *et seq*; *Fong Yue Ting v. United States*, 149 U. S. 698, 721, *et seq*; *Clark v. Allen*, 331 U. S. 502, 508-509; *Moser v. United States*, 341 U. S. 41, 45.

treaty. * * * It is true that this doctrine has been advanced in cases involving conflicts between treaties and statutes; but no reason is apparent why the same considerations should not be applicable when the question is whether an executive officer of one of the contracting states has denied rights secured by treaty to the other." *George E. Warren Corporation v. United States*, 94 F. 2d 597, 599 (C. A. 2), certiorari denied, 304 U. S. 572. Cf. *Skiriotes v. Florida*, 313 U. S. 69, 74: " * * * none of the treaties which appellant cites are applicable to his case. He is not in a position to invoke the rights of other governments or of the nationals of other countries. " "

"A case similar in many ways to the present one was *Peerson v. Parson*, 108 Fed. 461 (C. C. E. D. La.). There, plaintiffs, a citizen of New York, a citizen of the South African Republic, and the consul general of the Orange Free State, sued the master of a freighter and the owner's agents, all British subjects, to enjoin them from loading 1200 mules owned by the British government, consigned to Cape Colony (a British possession), and destined for use by the British army in the Boer War. Shipping the mules was alleged to violate the provision of the "Alabama Claims" treaty between the United States and Great Britain, that "A neutral government is bound * * * not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms * * *." Treaty of May 8, 1871, 17 Stat. 863, 865. To establish their standing to sue, the plaintiffs alleged that they owned property in the South African Republic and the Orange Free State, which had been and was being destroyed by the war; that shipping the mules would enable Great Britain to prolong the war, thereby subjecting their property to further destruction, whereas if Great Britain were denied

As we have pointed out above (*supra*, pp. 4-6), a breach by the United States of the Treaty of 1924 defining territorial waters, even if such a breach were involved, would not warrant Canada in abrogating the fishing rights specifically guaranteed by the Treaty of 1818 without reference to territorial waters and only partially corresponding to them. Whether Canada would, if it could, take such action is wholly speculative. If it did do so, the resulting disadvantages to Rhode Island citizens would be, as we have noted, only a remote and not a proximate result of the actions

supplies from American ports the war would end and further destruction of plaintiffs' property would be averted. The court refused a preliminary injunction, on the ground that the case presented was beyond the judicial competence. It first expressed grave doubt, on the merits, whether shipping mules by commercial freighter was an act of the sort forbidden by the treaty provision. Next, it pointed out that the consequences sought to be avoided were remote and not proximate, saying (108 Fed. at 464):

"It is not claimed, of course, that the horses and mules are to be used specially to destroy the property of the complainants. In such cases as the present one, where the aid of equity is invoked to protect property rights, the injury apprehended must be a clear and reasonable one, proximately resulting from the act sought to be enjoined. The injury apprehended by the complainants from the shipping of the mules and horses seems to be remote, indistinct, and entirely speculative. It seems clear that, even if this cause were within the cognizance of this court, there is herein no such connection of cause and effect between the shipment of the animals and the destruction of complainants' property as could sustain an averment of threatened irreparable injury, and that the averment that the war would cease if the shipments are stopped, which, in the nature of things, can only be an expression of opinion and hope concerning a

here complained of. And, in any event, the way in which the United States performs its treaty obligations to other countries is a political and not a justiciable matter. For all these reasons, it is plain that the treaties between the United States and Canada can afford no basis for the cause of action asserted by Rhode Island, and give it no standing to sue.

II. THE SUBMERGED LANDS AND RESOURCES ARE DISPOSABLE BY CONGRESS UNDER THE CONSTITUTION

A. Rhode Island argues at some length (Brief, pages 20-28) that the lands and resources under-matter hardly susceptible of proof, could not be made the basis for judicial action."

But the court concluded that it must deny relief for the more fundamental reason that the subject was political and not justiciable. It said (108 Fed. at 464-465):

"* * * the case is a political one, of which a court of equity can take no cognizance, and which, in the very nature of governmental things, must belong to the executive branch of the government. No precedent or authority has been cited to the court which, in its opinion, could even remotely sustain the cause of the complainants. No case has been cited, nor do I believe that any could have been cited, presenting issues similar to those of this cause. The three complainants are private citizens. * * * They claim that, by virtue of a declaration of international law contained in an international treaty to which the foreign countries in which their property is situated were not parties, they have the personal right to enjoin the shipments for the purpose of stopping the war, and thus saving their property from the destruction which they apprehend will result to it from a continuation of the war. When complainants' cause is thus analyzed, and the nature of the alleged right under the treaty is considered, it is obvious that a court of equity cannot take cognizance of the cause."

lying the marginal sea are not "property" and so are not subject to disposition by Congress under Article IV, Section 3 of the Constitution, which provides that Congress "shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." If that conclusion were indeed valid, it would prove entirely too much, even for Rhode Island. Article IV, Section 3, is the source of congressional power to make regulations regarding the submerged lands or to dispose of their resources; and if those lands and resources are not "property" or "territory" within the meaning of that provision it would follow that the area must remain unregulated and the resources untouched. Presumably, Rhode Island does not deny the power of Congress to extract and dispose of the minerals; one of its principal purposes in this proceeding is to protect its asserted right to share in past and future proceeds of such disposal. Moreover, if Congress had no power to make rules and regulations for the area, it could not provide for extraction of minerals even for the Government's

* The State does not explicitly say whether or not it regards the submerged lands as "territory" of the United States within the meaning of Article IV, Section 3, but the clear purport of the argument is that these lands are neither "territory" nor "property."

It should be particularly noted that the clause gives Congress not only the power to dispose of federal property but also to "make all needful Rules and Regulations respecting" such property.

own use. But if these lands are property for which Congress can make rules and regulations, and if the minerals can be sold, then by the same token these lands and resources are necessarily property of which Congress can dispose under Article IV, Section 3.*

B. Rhode Island's contention is, in essence, that the submerged lands and resources are attributes of the powers of the Federal Government over foreign affairs and national defense, and consequently are as inalienable as those powers. The lands and resources came in the first instance to the Federal Government because it possessed those powers, but it does not follow that for that reason they are clothed with inalienability. The obvious analogy is the power of the States to dispose of their submerged lands underlying inland navigable waters. Under the rule of *Pollard's Lessee v. Hagan*, 3 How. 212, those lands belong to the State "as an inseparable attribute of state sovereignty" and "as an incident of state sovereignty". *United States v. California*, 332 U. S. 19, 30, 36. See also *Barney v. Keokuk*, 94 U. S. 324, 338; *Donnelly v. United States*, 228 U. S. 243, 261-262 (these lands belong to the

* Rhode Island admits that history has rejected Gouverneur Morris's thesis that new States could not be created out of territory acquired after the adoption of the Constitution, but it nevertheless bases its view of Article IV, Section 3, on that unacceptable premise (Brief, pp. 25-26).

States "by their inherent sovereignty").^{*} But though state "dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged" in construing grants (*United States v. Oregon*, 295 U. S. 1, 14; *United States v. Texas*, 339 U. S. 707, 717), it is settled that by express legislation the States may convey their title as they see fit to private individuals or to municipalities (subject only to the paramount powers of the Federal Government).¹² Since the offshore lands are an incident of federal or external sovereignty in the same sense as the submerged lands beneath inland navigable waters are an attribute of state sovereignty (see *United States v. California*, 332 U. S. 19, 36;

^{*} For that reason, title to such land automatically passes, without specific mention, from the United States to a new State on its admission, where the United States formerly held the title when the State was a territory. *United States v. Texas*, 339 U. S. 707, 716-717; *United States v. Oregon*, 295 U. S. 1, 14; *United States v. Utah*, 283 U. S. 64, 75; *Scott v. Lattig*, 227 U. S. 229, 242-243; *Oklahoma v. Texas*, 258 U. S. 574, 583; *United States v. Holt Bank*, 270 U. S. 49, 55.

¹² *Weber v. Harbor Commissioners*, 18 Wall. 57, 66; *Donnelly v. United States*, 228 U. S. 243, 262; *Port of Seattle v. Oregon & W. R. R.*, 255 U. S. 56, 63; *United States v. Holt Bank*, 270 U. S. 49, 54; *Appleby v. City of New York*, 271 U. S. 364, 381; 388-389; *United States v. Dern*, 280 U. S. 352, 354; *United States v. Willows River Co.*, 324 U. S. 442, 506; see *United States v. Texas*, 339 U. S. 707, 716-717; cf. *Mobile Transportation Co. v. Mobile*, 187 U. S. 479, 487.

United States v. Texas, 339 U. S. 707, 716, 720), the same rules as to disposition must apply."

There are other well-known illustrations of the power to dispose of property which is acquired as an incident or attribute of inalienable federal powers. The District of Columbia became federal territory in order to provide "the Seat of the Government of the United States" (see Art. I, Sec. 8, Clause 17, of the Constitution), but in 1846 a portion was receded to Virginia. The Philippines became a United States possession as a result of the exercise of federal powers over foreign relations and the national defense, but no one doubts the validity of the grant of independence to the Islands. Forts, army posts, arsenals, and other military installations—all acquired for the purposes of national defense—

"Because the disposition here is by the United States to the States, it is of interest to note that there have been a great many grants by States of land under navigable inland waters to the United States. For a partial list of such grants in areas near the coast, see the Brief for the United States, *United States v. California*, No. 12, Orig., Oct. Term, 1946, pp. 166 ff., and Appendix B, pp. 227 ff.

Alabama seems to suggest in its Reply Brief (p. 5, fn. 10) that the *Pollard* case holds that a state cannot cede submerged lands beneath inland waters to the United States. We do not read the *Pollard* case as so stating, but if it does that portion of the opinion has been overruled by the later decisions holding that the State can make grants of these lands. See the cases cited in fn. 10, *supra*. See also *Shively v. Bowlby*, 152 U. S. 1, 28, 47-49, 58, and the other cases holding that the United States can dispose of these lands while the area is still a territory.

have been turned over to States and municipalities when it has been determined that this can safely be done. Munitions of war have frequently been handed over to foreign countries, see, e. g., 39 Op. Atty. Gen. 484, 489 ff (over-age destroyers). And the Federal Government may dispose of hydroelectric energy, produced as a byproduct of Congressional control over navigation and commerce, *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 330-336."

C. Rhode Island also asserts (Br., p. 26) that "this Court has repeatedly held, those resources do not constitute 'property' of either the United States or the adjoining states." No citation is given in support of that statement, but it presumably alludes to the fact that this Court used the term "paramount rights" rather than "ownership" in its decrees in *United States v. California*, 332 U. S. 804, 805, *United States v. Louisiana*, 340 U. S. 899, and *United States v. Texas*, 340 U. S. 900. But in holding that the United States "has

" Rhode Island's survey of early history (Brief, pp. 6-7, 23-26, 53-54) relates entirely to (a) views of federal power over property which have since been authoritatively rejected, or (b) feared disposal of property or rights to foreign governments (rather than from the Federal Government to the States), or (c) prophecies and assurances that, as a matter of probabilities, certain feared action *could* not be taken by the new government (not that it *could* not be taken, as a matter of law); or (d) problems wholly remote from those involved here, e. g., claims by the then existing states to actual legal interests of property in the western lands.

paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil" (*United States v. California*, 332 U. S. 19, 28-39), the Court did not hold that there were no property rights in the area, or that the United States did not own such rights. On the contrary, the greater includes the less, and the "paramount rights in, and full dominion and power over, the lands, minerals and other things", which this Court held to belong to the United States (*United States v. California*, 332 U. S. 804, 805), necessarily included rights of every description, proprietary as well as governmental. That is implicit in the statement in the *California* case that "The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea. The United States here asserts rights in two capacities transcending those of a mere property owner" (332 U. S. at 29; emphasis added). The Court clearly recognized that the right to dispose at least of the minerals was in issue when it said, " * * * our question is whether the state or the Federal Government has the paramount right and power to determine in the first instance when, how, and by what agencies, foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited" (*ibid.*, emphasis added). The phrase, "in the first instance",

shows that the Court had in mind the possibility of transfer of the rights and powers referred to; and certainly exploitation of the resources, contemplated by the Court, would include disposal of them. Cf. *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 336:—"And it would hardly be contended that, when the Government reserves coal on its lands, it can mine the coal and dispose of it only for the purpose of heating public buildings or for other governmental operations. * * * Or that when the Government extracts the oil it has reserved, it has no constitutional power to sell it. * * * The United States owns the coal, or the silver, or the lead, or the oil, it obtains from its lands, and it lies in the discretion of the Congress, acting in the public interest, to determine of how much of the property it shall dispose."

That this Court, in using the term "paramount rights", had no thought of precluding the existence of property rights within its scope, appears from its statement, "If this rationale of the *Pollard* case is a valid basis for a conclusion that *paramount rights* run to the states in inland waters to the shoreward of the low water mark, the same rationale leads to the conclusion that national interests, responsibilities, and therefore national rights are *paramount* in waters lying to the seaward in the three-mile belt" (332 U. S. at 36; emphasis added). The term was thus shown

to be used in a sense equally applicable to state rights in inland waters and federal rights in the marginal sea, and the Court regarded the two rights as comparable. As shown above (*supra*, pp. 16-18), it is well settled that the rights of a State in lands under navigable inland waters include alienable property rights.

It is unnecessary, however, to rely on inference or deduction to determine whether the federal rights in submerged lands and resources were regarded by this Court as "property", within the meaning of Article IV, Section 3, for the Court expressly declared that they were such property. In *United States v. California*, the jurisdiction of the Court was challenged on the ground that only a political question was involved. In overruling that contention, the Court said, "The justiciability of this controversy rests therefore on conflicting claims of alleged invasions of interests in *property* and on conflicting claims of governmental powers to authorize its use" (332 U. S. 19, 25; emphasis added). Since the jurisdiction of the Court to decide the case was predicated on the fact that property rights were the subject in dispute, it is too late now to reopen the same question by contending that the rights there adjudicated were something other than property rights. Moreover, as pointed out, in our Opposition in the *Alabama* case (pp. 24-25), the Court clearly indicated, in discussing the

power of Congress to prohibit the Attorney General from bringing the *California* suit, that the submerged offshore lands fell under Art. IV, Sec. 3, and in that connection referred to them as "public property". See 332 U. S. at 27-28. And at the close of its *California* opinion, the Court declared that it would not assume that "Congress, which has constitutional control over Government property, will execute its powers in such way as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission." 332 U. S. at 40 (emphasis added)."

CONCLUSION

For the foregoing reasons, and for the reasons set forth in these defendants' Opposition to the Motion of the State of Alabama for leave to file its complaint against the State of Texas, et al., it is submitted that Rhode Island has no standing to sue; that the complaint fails to state a claim on which relief could be granted against these defendants; that the suit is against the United States, which has not consented to be sued; that

"Rhode Island relies (Br., pp. 22-23) on former Congressman Hobbs's view that the offshore submerged lands "are the common property of the family of nations," but that position is at war with the basic rationale of the *California*, *Louisiana*, and *Texas* decisions, and has not gained any substantial acceptance. So far as the United States is concerned, the opposite position has been explicitly taken by the Continental Shelf Proclamation (Proclamation No. 2067 of Sept. 28, 1945, 59 Stat. 884) and Section 3 of the Outer Continental Shelf Lands Act, 67 Stat. 462 (Act of Aug. 7, 1953).

the United States is an indispensable party and is not, and cannot be, joined. For each and all of these reasons leave to file the complaint should be denied.

Respectfully submitted,

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FEBRUARY 1954.

Supreme Court of the United States

OCTOBER TERM, 1953

No. , Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

COMPLAINANT'S PETITION FOR REHEARING

We respectfully request a rehearing in these cases in which the Court has denied the motions of the complainant states, Alabama and Rhode Island, to file complaints against the defendant states, Texas, California, Florida and Louisiana, to restrain acts of the defendant states asserting power and authority over submerged lands and resources under the marginal seas in violation of the rights of the complainant states under the Constitution. We urge a rehearing on the following grounds:

- I. The per curiam opinion in these cases assumes, without considering the meaning and effect of the particular statute in controversy, that the United States has given away its rights in the submerged lands under the marginal seas. The per curiam opinion in these cases constitutes an advisory opinion on hypothetical questions of law and fact involving basic state and federal relations, prejudicing but not adjudicating the actual cases and controversies presented by the complaints which this Court has denied leave to file and on which it has not heard argument on the merits.

On the hearing on the motion for leave to file, the complainant states confined their arguments to the right and standing of the complainants to sue and the justiciable character of the controversies presented by the complaints. The grave constitutional and legal issues involved were only sketched and outlined. The complainant states tried to impress upon the Court their right to a full hearing on these grave and far-reaching issues. They did not attempt to dispose of these issues in the time allowed for summary argument on motion for leave to file, as they did not believe that this Court would even wish to hear argument on the merits of the constitutional and statutory issues before the Court was satisfied as to the right and standing of the complainant states to sue. This was also the understanding of some if not all of the defendant states. In their printed objections to Alabama's motion for leave to file, the States of California and Florida expressly stated (p. 2):

"The following objections are presented jointly by California and Florida. These objections are directed solely to Alabama's (and Rhode Island's) motion for leave to file a complaint and are limited to jurisdictional arguments which make it plain that no relief may be granted in the exercise of the original jurisdiction of this Court.' *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 445 (1945); *Arizona v. California*, 298 U.S. 558, 559 (1936). For that reason, no argument on the merits is being submitted at this time."

The suits brought by the complainant states raise issues not only of constitutional power but of the statutory exercise of constitutional power. They raise issues not only as to whether the acts of the defendant states complained of can be made lawful against the complainant states by an Act of Congress, but whether Public Act 31 by its terms does make these acts lawful. In paragraph XXXIII of the Rhode Island complaint and in paragraph XXXVII of the Alabama complaint, it is alleged that "Public Law 31, 83d Cong., 1st Sess., c. 65, should not be construed so as to authorize the . . . claims, assertions and actions of any of the defendant states described in this complaint."¹

¹ Counsel for Alabama alluded to this point in his oral argument. Transcript pp. 41-43. He stated: "In that connection, I would like to mention one thing that counsel for Rhode Island touched upon yesterday. He spoke of Section 5 of the Act. Section 5 specifically excepts from the operation of the Act, and I quote:

'All lands acquired by the United States by eminent domain proceedings, purchase, cession, gift or otherwise in a proprietary capacity.'

"Now, the presence of this provision in the statute places the defendants on the horns of a particularly disagreeable dilemma. The Attorney General of the United States, in his reply to Rhode Island's brief, argues that the off-shore areas formerly constituted the property of the United States, and for that reason, states the Attorney General of the United States, Public Law 31 represents a constitutional exercise of congressional power under the property clause.

"This argument rests wholly and exclusively on the concept which we have just been discussing, that the areas in question might be said to be property of the United States.

"But if, in fact, these areas are now held by the Court to constitute property of the United States, or if the nature of the interest of the United States is a proprietary interest, then by Section 5 of the Act, it is specifically provided that these areas didn't pass to the adjoining states by virtue of Public Law 31. In a nutshell, the defendants find themselves hoist on their own petard, and if their constitutional argument is sound, then the legislation which Congress enacted specifically provided that the areas which we are here discussing didn't pass to the adjoining states by virtue

It has not been the practice of this Court to deal with either constitutional power or the statutory exercise of constitutional power in the abstract. As Justice Frankfurter stated in *International Longshoremen's Union v. Boyd*, decided March 8, 1954, "Determination of the . . . constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function."

In the instant cases there is involved not only the question of constitutional power but the nature of the constitutional power purported to be exercised by the Congress, whether the rights of the United States were sovereign or proprietary or both. The Court's conception of the nature of the constitutional power has a vital bearing, as we shall show, on the effect to be given to the particular statutory exercise of that power, and this the Court did not even touch upon in its *per curiam* opinion.

We respectfully submit that this Court should not deny the complainant states leave to file their complaints and at the same time render an advisory opinion on the constitutional power of Congress or the possible effects of an

of Public Law 31, but were specifically excepted from the operation of the Act by Section 5 thereof."

Justice Burton: "Do you think that makes sense?"

Mr. Leva: "It would be a valid interpretation of the statute. It would make sense in that, I think, it is quite clear that Congress was trying to give away with one hand, and to say with the other, 'We are not really giving anything away.'"

"Then, the net effect of the statute would be to confirm the title of the adjoining states to the tidelands, in the proper sense of that term—the area between low and high water (and the area under the inland waters). That would be the remaining effect of the statute on that interpretation.

"We think it is a conceivable statutory interpretation, and if you say that the property clause applies, you have got to go on, it seems to us, to the following and state Section 5 exempts anything that the U. S. owned in a proprietary capacity."

See also, Rhode Island's Reply Brief, p. 7, footnote 4.

Act of Congress. Such an advisory opinion necessarily prejudices and prejudges the rights of the parties on the basis of a partial and fragmentary consideration of the law and the facts which should govern the actual adjudication of the rights of the parties if leave to file the complaint were granted.

If the complainant states have standing and right to sue, which this Court does not deny, it is respectfully submitted that the Court should either exercise its jurisdiction and adjudicate the rights of the parties on a full consideration of the applicable facts and law, or it should in its discretion refuse to take jurisdiction. It would not wish to appear at one and the same time to refuse to let the complaints be filed and proceed without argument to render an advisory opinion on hypothetical questions which may seriously prejudice the rights of the parties which it has refused to adjudicate.

Certainly this Court would not wish to deliver an advisory opinion affecting vital incidents of the external sovereignty of the United States and basic relations between the states *inter sese* and between the states and the nation, and involving what might be the permanent and irrevocable surrender of invaluable and irreplaceable resources which this Court has held belonged to the United States. Such issues are determined by this Court only in an actual controversy of which it takes jurisdiction and only after adequate argument on the merits and full consideration of all the applicable facts and law.

It is peculiarly important in these times that the grave and far-reaching issues presented by these suits should not appear to have been summarily disposed of without adequate notice and full and fair hearing. *In these critical times, when procedural safeguards elsewhere are crumbling, the high standards of procedure maintained by this Court should not be dimmed or obscured.*

II. If, as this Court indicates in its *per curiam* opinion, the submerged lands under the marginal seas constitute property of the United States, the complainant states should be allowed to file their complaints, because the acts of the defendant states in asserting power over such property have not been validated or made lawful by Public Law 31, properly applied and interpreted.

The Court in its *per curiam* opinion explicitly confirms that the United States acquired the off-shore lands in a proprietary as well as a sovereign capacity. This explicit recognition of the title of the United States to the off-shore lands has a vital bearing on the meaning and effect of Public Law 31. Indeed, if that be the correct interpretation of this Court's action on March 15, it would appear that Public Law 31 is ineffective by its terms to transfer any of the off-shore oil resources, beyond the tidelands proper, to the defendant states.

This Court has hitherto been most cautious in its construction of grants of public property, whether to a state or person, and has not extended them further than the clear and explicit wording of the grants required. *Charles River Bridge v. Warren Bridge Co.*, 11 Pet. 420, 547-548; *United States v. Arendo*, 6 Pet. 691, 738; *Leavenworth v. L. & G. R. Co.*, 92 U.S. 733, 740; *St. Clair County Turnpike Co. v. Illinois*, 96 U.S. 63, 68; *Slidell v. Grandjean*, 111 U.S. 412, 438; *Wheeling & Belmont Bridge Co. v. Wheeling Bridge Co.*, 138 U.S. 287, 293; *Coosaw Mining Co. v. South Carolina*, 144 U.S. 550, 562; *Williams v. Wingo*, 177 U.S. 601, 603; *Larsen v. South Dakota*, 278 U.S. 429, 435; *Reichelderfer v. Quinn*, 287 U.S. 315, 321; *Great Northern R. Co. v. United States*, 315 U.S. 262, 272. As Justice Harlan said in *Coosaw Mining Co. v. South Carolina*, 144 U.S. 550, 562:

"The doctrine is firmly established that only that which is granted in clear and explicit terms passes by a grant of property, franchises, or privileges in which the government or the public has an interest. Statutory grants of that character are to be construed strictly in favor of the public, and whatever is not unequivocally granted is withheld; nothing passes by mere implication. This principle, it has been said,

[quoting Justice Field] "is a wise one, as it serves to defeat any purpose concealed by the skillful use of terms to accomplish something not apparent on the face of the act, and thus sanctions only open dealing with legislative bodies." *Slidell v. Grandjean*, 111 U.S. 412, 438."

This principle has peculiar force and cogency when the public grants, as those here involved, may place invaluable and irreplaceable resources beyond the power of future Congresses to recall. The principle also has peculiar force and cogency when it would enable a court, as here, to avoid adjudication of grave and serious constitutional questions affecting permanently basic relations between the states and the nation. As Mr. Justice Jackson remarked in a recent case, *United States v. Five Gambling Devices*, decided December 5, 1953:

"The principle is old and deeply embedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative. *United States v. Rumely*, 345 U.S. 41. This is not because we would avoid or postpone difficult decisions. The predominant consideration is that we should be sure Congress has intentionally put its power in issue by the legislation in question before we undertake a pronouncement which may have far-reaching consequences upon the powers of the Congress and the powers reserved to the several states. To withhold passing on an issue of power until we are certain it is knowingly precipitated will do no great injury, for Congress, once we have recognized the question, can make its purpose explicit and thereby necessitate or avoid decision of the question."

Does Public Law 31 by clear and explicit language give the defendant states the rights which they are claiming in the off-shore resources over which this Court had held the United States had paramount rights and full dominion? Whatever may have been the wishes or objectives of some of the proponents of Public Law 31, the language of the

statute neither clearly nor explicitly makes such grant. On the contrary, all lands acquired by the United States in a proprietary capacity were deliberately excluded from the act, obviously to allay legal and political fears regarding a "give-away" through the abdication to a few favored states of property belonging to all the United States.

Section 5 of Public Law 31 expressly excepts from the operation of Section 3, the section which purports to confirm and assign to the states title and ownership of the lands beneath navigable waters within their boundaries:

"All lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity."

This provision was added to Senate Joint Resolution 13 by the Senate Committee on Interior and Insular Affairs. The change made in the resolution as introduced in the Senate is shown by the following excerpt from the Committee's Report. (83d Congress, 1st Session, Senate, Report No. 133, p. 16). Deletions made by the Committee are indicated by a line through the type, additions made by the Committee are italicized.

"Sec. 5. Exceptions From Operation of Section 3 of This (57) ~~Act Joint Resolution~~.—There is excepted from the operation of section 3 of this (58) ~~Act Joint Resolution~~—

(a) all (59) ~~specifically described~~ tracts or parcels of land (60) ~~and together with all accretions thereto,~~ resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the (61) ~~decisions of the courts of such State, or their respective grantees, or successors in interest, by cession, grant, quitclaim, or condemnation, or from any other owner or owners thereof by conveyance or by condemnation, provided such owner or owners had lawfully acquired the title to such lands and resources in accordance with the statutes or decisions of the courts of the State in which the lands are located, and law of the State or of~~

the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union; all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;"

The resolution, as originally introduced, excepted only lands which the United States had acquired from the States themselves or from persons who had good title under state law. The means of acquisition were limited to cession, grant, quitclaim, condemnation or conveyance. The committee amendments were not a mere restatement of the deleted language of the original. Specific language was introduced to cover lands which were filled in, built up, or otherwise reclaimed by the United States as well as lands actually occupied under claim of right. But the Committee did not stop there; it also added general language excepting all lands however acquired by the United States if acquired in a proprietary capacity.

In construing a public grant in abdication of national rights and national interests and involving the most serious questions of constitutional power, there is no reason for this Court to ignore or to narrow the clear and explicit exceptions incorporated in the statute even though the result is to defeat the objectives of some of the proponents of the legislation. The Congress enacted the statute and not the objectives of some of its proponents.

There is reason to believe that the Senatorial sponsors of Public Law 31 accepted the broad and unqualified exception in order to protect those who supported them from the charge that they were voting to give away property of the United States. While in the congressional debates there are casual references to the right of the Congress to dispose of property belonging to the United States, the sponsors

of the legislation were unwilling to concede that they were disposing of property belonging to the United States. They insisted that they were not giving away rights which belonged to the United States, but were recognizing rights which had always belonged to the States. They refused to recognize that there was a difference between the submerged lands under tideland and inland waters which this Court has held belongs to the States and the submerged lands under the marginal seas which this Court has held belong to the nation. As Senator Holland of Florida, one of the principal proponents of Public Law 31, stated, "this joint resolution will confirm to the maritime states the rights which they had respectively enjoyed since the founding of our Nation, and up to the date of the decision in the California case, in their offshore land and waters which lie within their constitutional boundary." (Congressional Record, Senate, April 7, 1953, p. 2848). As Senator Fulbright pointed out, "I have tried to make it clear—although I see that I have not made it clear to the Senator from Florida that the approach made by him and other proponents of the joint resolution is quite an incorrect one. If they would accept the decision of the Supreme Court in stating the law—in other words, if they would say, 'This is the decision of the Court, and this property belongs to the United States, that would be a different matter' . . . The trouble is that the Senator has never accepted the facts in the case. He has never recognized that these rights belong to the United States." (Congressional Record, Senate, April 21, 1953, p. 3613).

This the proponents of the legislation were not willing to do. They insisted that they were restoring and confirming rights that had always belonged to the states.

The Senate Committee's Report offers further evidence of the confusion on the part of the sponsors of Public Law 31, with respect to the nature of the national government's interest in the off-shore areas. Thus, the Committee Report states, in small print, that "the committee wishes to

emphasize that the exceptions . . . do not in any wise include any claim resting *solely* upon the doctrine of 'paramount rights' enunciated by the Supreme Court . . . " (83d Cong., 1st Sess., Senate Report No. 133, p. 20). (Emphasis added).

This passage makes it clear how serious was the Senatorial misunderstanding—or misstatement—of this Court's earlier rulings. For this Court had never enunciated a doctrine to the effect that the national government's "claim" rested "*solely*" on paramount rights. Indeed, in *United States v. California*, 332 U.S. 19, 34, this Court expressly stated that "acquisition . . . of the three mile belt [has] been accomplished by the national Government . . .". And the Court went on to say that, in addition to this "acquisition" of the three mile belt by the national government, "protection and control of it has been and is a function of national external sovereignty."

Moreover, it should also be noted that the language quoted above, from the Senate Committee's Report, is not consistent with the sweeping language of the exemptions as set out in the statute itself. It would change and not explain the statutory exception. It is for this Court and not vague and equivocal language in small print in a committee's report to determine whether the paramount rights of the United States in the offshore lands include property rights, thereby bringing those rights within the statutory exception.

But let us delve a little deeper into the origin of this statutory exception of all lands acquired by the United States in a proprietary capacity. In the course of the debates, Senator Cordon, the Chairman of the Senate Committee in charge of the bill, stated:

"The Senator from Oregon only wants to say with reference to the exceptions set forth in the section (Section 5) that they were to a great extent urged and recommended by the Department of Justice, and approved by it, as affording ample protection for prop-

erties of the United States which should not be affected by this joint resolution." (Congressional Record, Senate, April 2, 1953, p. 2798)

An examination of the views of the Attorney General and Department of Justice at the Senate Committee's hearings on the bill leave no doubt that the language excepting all lands acquired by the United States in a proprietary capacity was intended by the Attorney General to except from the quitclaim the off-shore lands. (Hearings before Committee on Interior and Insular Affairs, U. S. Senate, 83d Congress, 1st Session on S. J. Res. 13, pp. 925-974). The Attorney General urged that the committee should draw a distinction between the submerged lands under inland waters, those under the marginal seas within the historic three mile limit and those beyond. He urged that "for the purpose of minimizing constitutional questions" the statute quitclaim or confirm the right of the states to the submerged lands under the inland waters, that it should not quitclaim the submerged lands within the historic three mile limit but merely authorize the states to administer and develop the lands within those limits, leaving the title with the federal government, and it should authorize the federal government to develop the lands beyond the historic three mile limit.

The Attorney General explained: "My recommendation would mean, in legal terms, that instead of granting to the states a blanket quitclaim title to the submerged lands within their historic boundaries, the Federal Government would grant to the states only such authority as required for the States to administer and develop the natural resources." (*ibid*, Hearings, p. 926)

In a colloquy with Senator Long and Senator Murray the Attorney General further and even more explicitly stated:

Attorney General Brownell: "We believe that, so far as the off-shore submerged lands are concerned,

the Federal Government should have the entire title and dominion over the submerged lands.

Senator Long: "You feel that the states should have no interest in that.

Attorney General Brownell: "Only in whatever permissive way the Federal Government would give it to them; yes.

Senator Murray: "But the states would have no legal claim to it.

Attorney General Brownell: "That is correct. The title and control would be in the Federal Government.

Senator Murray: "Then the Federal Government could authorize the Interior Department to administer it.

Attorney General Brownell: "That is correct."
(*ibid*, Hearings, p. 941)

In light of this record there can be no doubt that the Department of Justice drafted the exceptions in section 5 with a view to including, in the exceptions from the quitclaim and assignment to the states, all off-shore lands. It may be conceded that the Department did not intend that the exception should extend to the limited authority which it had recommended be given to the states to *administer and develop* the natural resources in those lands, as distinguished from the quitclaim or transfer of title with respect to such lands. It may be conceded that some of the proponents of the legislation bungled, from their point of view, when they included the power to administer in the same section, section 3, as the quitclaim of title, and then made the Department of Justice's exceptions in section 5 applicable to the whole of section 3, the power to administer as well as the quitclaim.

But this bungling was purposeful. The proponents of the legislation deliberately hoisted themselves on their own petard. They did not agree with Attorney General Brownell that proprietorship or title to the off-shore lands were in the United States. In the Senate Hearings (*ibid*, Hearings, p. 183) this colloquy took place:

Senator Anderson: "The Supreme Court has three times said that these lands in the open ocean belong to the Federal Government.

Senator Daniel (a co-sponsor with Senator Holland of resolution 13 which became Public Law 31): "They have not once said that, Sir.

Senator Anderson: "Well, they have said that they do not belong to California, Texas and Louisiana.

Senator Daniel: "That is correct."

At other times, in the Senate hearings, Senator Daniel of Texas was even more specific in maintaining that the United States never had ownership of the off-shore lands. He stated, for example: "The Holland bill simply recognizes that the long-established good-faith claims of all of the 48 states and establishes, confirms and restores to every State in the Union the ownership and control of all this type of property within their respective historic boundaries. *It will not be a 'gift', because the Federal Government has never possessed or exercised any ownership of the property.*" (italics supplied).

(*ibid*, Hearings, p. 206)

Senator Daniel further stated:

"*The Supreme Court did not hold that the Federal Government owns these lands. It said in the California case that the needs and powers of the national sovereign are paramount 'bare legal title' and transcend the right of 'a mere property owner'; that such paramount government powers give the Federal Government the right to take and use property within the established boundaries of a state without having ownership or paying compensation.*" (italics supplied) (*ibid.*, Hearings, p. 231)

It is clear that the proponents of the legislation allowed Attorney General Brownell's exceptions to apply to all submerged lands, those under the marginal seas as well as those under the inland waters because they maintained, both for political and legal reasons, that the title to these lands was not in the United States.

If the exceptions in the Congressional enactment were broader than the proponents of the legislation intended, it is for the Congress and not for this Court to rewrite the statute.

This Court should be completely certain that the Congress itself has intentionally put its power in issue before it allows irreplaceable natural resources to be granted beyond the power of future Congresses to recall and before it undertakes to decide grave and serious constitutional issues involving what may be the irrevocable surrender of national responsibilities and national resources.

We respectfully submit therefore that if the lands under the marginal sea are, or were at the time of the enactment of Public Law 31, property of the United States, Public Law 31 is ineffective by its terms to make lawful the acts of the defendant states. By its terms all lands acquired by the United States in a proprietary capacity are excepted from its operations. Attorney General Brownell in his brief on behalf of the individual defendants in opposition to Rhode Island's motion for leave to file complaint not only does not deny but affirmatively maintains that the paramount rights of the United States in these off-shore lands include and do not exclude proprietary ownership (Brief, p. 19 ff). But he overlooks and never mentions the vitally important fact that all lands acquired by the United States in a proprietary capacity are excepted from the operation of Public Law 31.

The offshore lands are excepted from Public Law 31 because they were acquired by the United States in a proprietary capacity. It is now clear beyond doubt under the rulings of this Court that the United States acquired by purchase or cession in a proprietary as well as sovereign capacity the lands off the shores of Florida from Spain, the lands off the shores of Louisiana from France, the lands off the shores of California from Mexico, and the lands off the shores of Texas from Texas when Texas was admitted into the Union on equal footing with all other states.

If, therefore, the off-shore lands were the property of the United States before the enactment of Public Law 31, they remain the property of the United States under and by the terms of Public Law 31. The statute so construed may not have fulfilled all the desires of all of its proponents regarding the submerged lands under the marginal seas, but it does confirm the rights of all states to all the submerged lands between the high and low water mark of the tides and under the inland waters. The proponents of the legislation had made much of the point that it was vitally important to all states to have removed an alleged cloud on their title to these submerged tideland and inland areas. See, for example, *ibid*, Hearings, p. 172 ff. It is not for this Court to rewrite a congressional statute to give away property of the United States which the statute by its terms excepts from its operation.

If this Court gives effect to the statutory exceptions, the Congress may, if it has the constitutional power, remove any or all of them. But if this Court ignores the particular statutory exception here in question, it casts doubt on the power of Congress to recapture the property of the United States except by purchase or eminent domain. If it ignores this statutory exception, this Court itself without a clear Congressional mandate becomes responsible for the giveaway of invaluable property of the United States and the surrender of a vital part of its external sovereignty.

As Justice Cardozo has said:

"A community whose judges would be willing to give it whatever law might gratify the impulse of the moment would find in the end that it had paid too high a price for relieving itself of the bother of awaiting a session of the Legislature and the enactment of a statute in accordance with established forms": (*Dóyle v. Hofstader*, 257 N.Y. 244, 288.)

CONCLUSION

The *per. curiam* opinion purports to deny leave to the complainant states to file their suits. But it does not stop there. It recognizes the right and standing of the complainant states to sue, and proceeds to hold, as with Rhode Island and the Attorney General of the United States have contended, that the paramount rights of the United States in the off-shore lands include title and proprietary ownership of those lands as well as sovereignty.

We submit that the Court should not leave these suits of such constitutional and practical import half-argued, half-decided, and in doubt as to just what has been decided. The Court should grant to the complainant states a hearing in order to determine whether the Act of Congress in controversy, which excepts from its operation all lands acquired by the United States in a proprietary capacity, does in fact surrender to a few favored states the off-shore lands the title and proprietary ownership of which is now expressly recognized by the Court to have always been in the United States.

For the reasons stated we respectfully request a rehearing so that the rights of the complainant states and other states may not be foreclosed or substantially prejudiced by an advisory opinion of this Court in suits which this Court has refused to hear on their merits. These suits involve not only the validity but the construction of a statute on which this Court should not speak without hearing the complainant states. Should a rehearing be granted we reserve our rights to seek to amend our complaints to clarify the issues which they are intended to raise, should such clarification be desirable. In the event a rehearing

is denied, we reserve the right to move the Court for leave to file a new complaint, presenting issues on which the Court has not heard the complainant states.

WILLIAM E. POWERS,
Attorney General of Rhode Island.

BENJAMIN V. COHEN and
THOMAS G. CORCORAN,
Attorneys for Complainant.

CORCORAN, YOUNGMAN & ROWE,
EUGENE GRESSMAN,
Of Counsel.

Certificate of Counsel

We hereby certify that this petition for rehearing is presented in good faith and not for delay.

We further certify that a copy of this petition for rehearing has been served on all the parties of record by mailing a copy of same to them, postage prepaid.

WILLIAM E. POWERS,
Attorney General of Rhode Island.,

BENJAMIN V. COHEN and
THOMAS G. CORCORAN,
Attorneys for Complainant.

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Supreme Court of the United States

October Term, 1953

No. _____, Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
MCKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

**BRIEF OF THE STATE OF WEST VIRGINIA
AS AMICUS CURIAE IN SUPPORT OF
PETITION FOR REHEARING**

JOHN GEORGE FOX
*Attorney General of
West Virginia*

FRED M. VINSON, JR.
*Counsel for West Virginia
Amicus Curiae*

Supreme Court of the United States

October Term, 1953

No. _____, Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

**STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST**
Defendants.

BRIEF OF THE STATE OF WEST VIRGINIA AS AMICUS CURIAE IN SUPPORT OF PETITION FOR REHEARING

The State of West Virginia, by its Attorney General, files this brief as *amicus curiae*, pursuant to Rule 27(9)(d) of the Revised Rules of this Court, in support of the petition for rehearing filed by the State of Rhode Island, complainant in the above-entitled proceeding.

The State of West Virginia most respectfully urges this Honorable Court to grant the said petition for rehearing in order that there may be a full hearing and consideration of the vital issues raised on the merits of the complaints sought to be filed by the State of Rhode Island, and by the State of Alabama in the companion proceeding.

We feel that a rehearing is necessary and desirable for the following reasons:

1. Both the complainant state and the defendants addressed themselves primarily to the jurisdictional aspects of the questions presented in the proceeding. Therefore, the interests of justice and of the nation suggest that the parties hereto be given an opportunity to present to the Court their respective arguments on the merits, before the instant proceeding is finally disposed of other than on jurisdictional grounds and before the submerged lands are irrevocably lost to the nation and its citizens.

2. The cogent arguments advanced in complainant's petition for rehearing deserve full development by counsel, and the attention of this Court.

3. In addition thereto, we feel that Public Law 31, 83rd Cong., 1st Sess., c. 65 raises vital questions incident to the external sovereignty of the United States, and basically alters the relationship between the states and the nation within the constitutional framework of our federal system.

4. The issues raised by the complaint sought to be filed are so important to the citizens and to the State of West Virginia that the State of West Virginia desires, if the petition for rehearing is granted, to move to intervene in the proceeding or, in the alternative, to file a comprehensive brief as *amicus curiae*.

The foregoing factors impel the State of West Virginia to urge that the petition for rehearing be granted in order to accord full consideration to the important statutory questions and constitutional principles presented.

Respectfully submitted,

JOHN GEORGE FOX
Attorney General of
West Virginia

FRED M. VINSON, JR.
Counsel for West Virginia
Amicus Curiae

Supreme Court of the United States

OCTOBER TERM, 1953

No. , Original

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS *Complainant*

v.

STATE OF LOUISIANA; STATE OF FLORIDA;
STATE OF TEXAS; STATE OF CALIFORNIA;
GEORGE M. HUMPHREY; DOUGLAS MCKAY;
ROBERT B. ANDERSON; IVY BAKER PRIEST *Defendants*

**BRIEF OF THE STATE OF KENTUCKY
AS AMICUS CURIAE
IN SUPPORT OF PETITION FOR REHEARING**

The Commonwealth of Kentucky, through its Attorney General, files this brief as amicus curiae, as permitted by Rule 27(9)(d) of the Revised Rules of this Court, in support of the petition for rehearing filed by the State of Rhode Island, complainant in the above-styled proceeding.

We respectfully request a rehearing in these cases in which the Court has denied the motions of complainants and urge a rehearing on the following grounds:

- I. The per curiam opinion assumes, without so stating, to deny leave of the complainant states to file their suits. The opinion further rules in an advisory capacity on hypothetical questions dealing with law and facts, without concluding but obviously prejudicing the actual complaint or case presented by the complainants. The Court has in effect reached a conclusion without hearing argument on the merits.

The constitutional and legal issues at bar were merely sketched and outlined. The State of Rhode Island has endeavored to impress upon the Court her right to a full and comprehensive hearing on these issues. The complainant states have raised issues of the statutory exercise of constitutional power. They further raise issues as to whether the acts of the defendant states are lawful against the complainant states in view of Public Law 31. Here we are faced with the determination of the constitutionality of legislation prior to its immediate effect in the context of a concrete case. The Court should not and probably does not intend to deliver an advisory opinion dealing with vital phases of the sovereignty of the Federal Government and its relations between the states and involving permanent and conclusive surrender of valuable natural resources which the Court has unequivocally held belonged to the United States. The Court could not mean this and yet the defendant states by their interpretation of Public Law 31 have so construed it. This Court has never made a practice of dealing with statutory or constitutional power in an abstract manner, as stated in *International Longshoremen's Union v. Boyd*, decided March 8, 1954, "Determination of the . . . constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and ab-

abstract an inquiry for the proper exercise of the judicial function." Thus the Court has changed positions as nimbly as a football team at half-time. An issue of such far reaching consequences should be decided only after exhaustive argument on the merits and full consideration of the law and facts.

II. The defendant states in asserting power over property of the United States are doing so without Public Law 31 having been validated, or properly interpreted.

The Court has always been extremely cautious in its interpretation of legislative grants of public property and has stayed stringently within the precise wording of the grants. See *Caldwell v. United States*, 250 U.S. 14, in which the Court stated, "Nothing passes but what is conveyed in clear and explicit language." See also Mr. Justice Jackson's remarks in *United States v. Five Gambling Devices*, which was handed down December 5, 1953:

"The principle is old and deeply embedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative. *United States v. Rumely*, 345 U.S. 41. This is not because we would avoid or postpone difficult decisions. The predominant consideration is that we should be sure Congress has intentionally put its power in issue by the legislation in question before we undertake a pronouncement which may have far-reaching consequences upon the powers of the Congress and the powers reserved to the several states. To withhold passing on an issue of power until we are certain it is knowingly precipitated will do no great injury, for Congress, once we have recognized the question, can make its purpose explicit and thereby necessitate or avoid decision of the question."

Thus we contend that Public Law 31 does not give in

4

precise or explicit language the rights in off-shore resources to defendant states as they are so claiming. Whatever the defendant states may contend, it is obvious that the statute does not clearly make such grant. On the other hand, all lands acquired by the Federal Government in a proprietary capacity have been clearly excluded in Public Law 31 to prevent legal opposition to an unfair distribution or termination of property belonging to the United States to some of the states only and not to all the states. These lands in contention are excepted in Public Law 31, notwithstanding the fact that they were acquired in a proprietary capacity by the United States. It is quite obvious that the United States acquired by purchase or cession in a proprietary and sovereign capacity all lands off the shores of the defendant states. Title to the Florida and Louisiana lands came by purchase from foreign sovereigns while Texas, ceded her claim by accepting membership in the Union and making herself equal to all other states of the Union. Consequently, if the off-shore lands were originally property of the United States, such lands would remain so by the terms of Public Law 31.

CONCLUSION

The per curiam opinion does not discuss the sufficiency or insufficiency of the defenses. The Court has not conclusively ruled on the allegations of the complainant. It has merely condensed procedural problems into a conclusion without settling the whole controversy. It is essential that there be a complete consideration by the Court of the statutory questions raised by the petition for a rehearing, questions preliminary to any constitutional determination. Therefore, Kentucky respectfully requests this Court to grant the petition for rehearing.

J. D. BUCKMAN, JR.
Attorney General

EARLE V. POWELL
Assistant Attorney General

COMMONWEALTH OF KENTUCKY

Certificate of Counsel

We hereby certify that this petition for rehearing is prepared in good faith and not for delay.

We further certify that a copy of this petition for rehearing has been served on all parties of record by mailing a copy of same to them, postage prepaid.

J. D. BUCKMAN, JR.
Attorney General

EARLE V. POWELL
Assistant Attorney General

COMMONWEALTH OF KENTUCKY

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

**BRIEF OF THE STATE OF MONTANA AS AMICUS
CURIAE IN SUPPORT OF PETITION
FOR REHEARING**

This brief is filed by the Attorney General of Montana in support of the Petition for Rehearing of the State of Rhode Island, Complainant. The brief is filed pursuant to Rule 27(9)(d) of the Revised Rules of this Court.

Montana joins its sister states, the Commonwealth of Kentucky and the States of Missouri and West Virginia, which are also urging as *amicus curiae*, that the Petition of Rhode Island be granted.

Montana has a vital interest in this proceeding. It strongly believes that the opportunity for a full hearing and consideration of the issues on their merits should be granted by this Court. Therefore, it respectfully urges this Court to grant this Petition for Rehearing. In the interest of brevity Montana herewith accepts and urges the arguments for rehearing which are stated in detail in the Rhode Island Petition.

So important are the issues raised by the Complaint that the State of Montana desires, if the Petition for Rehearing is granted, to move to intervene in the proceeding or, in the alternative, to file a comprehensive brief as *amicus curiae*. Montana is not one of the favored few states which Congress sought to endow with a share of a tremendous national asset through the medium of Public Law 31. It believes that before this Court places its stamp of constitutional approval on an effort to give away natural resources which the United States held in a sovereign and proprietary capacity, it should be ascertained authoritatively whether such a gift was in fact made by Public Law 31. This matter is too important to the sovereign states like Montana which are not benefited by Public Law 31 to pass over this statutory question in silence. These states are vitally concerned lest assets which have been conserved and developed for the protection and benefit of the entire American people are considered quit-claimed to a few states contrary to express statutory language.

It is essential, therefore, that there be a full-scale consideration by this Court of the statutory questions raised by the Petition for Rehearing, questions which are necessarily preliminary to any constitutional determination. To that end, the State of Montana respectfully urges this Court to grant the Petition for Rehearing.

Respectfully submitted,

ARNOLD H. OLSEN,
Attorney General of Montana.
 JAMES H. ROWE, JR.,
 THOMAS G. CORCORAN,
Attorneys for Montana
Amicus Curiae.

CORCORAN, YOUNGMAN & ROWE,
Of Counsel.

April 10, 1954.

Certificate of Counsel

We hereby certify that this Brief in support of the Petition for Rehearing is prepared in good faith and not for delay.

We further certify that a copy of this Brief has been served on all parties of record by mailing a copy of same to them, postage prepaid.

ARNOLD H. OLSEN,
Attorney General of Montana.
JAMES H. ROWE, JR.,
THOMAS G. CORCORAN,
Attorneys for Montana
Amicus Curiae.

FILED

APR 8 1954

HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

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STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

ANSWER OF THE STATE OF LOUISIANA TO COM-
PLAINANT'S PETITION FOR REHEARING

FRED S. LeBLANC,
Attorney General,
State of Louisiana

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana

BAILEY WALSH,
Special Assistant Attorney General,
State of Louisiana

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No. , Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

**ANSWER OF THE STATE OF LOUISIANA TO COM-
PLAINANT'S PETITION FOR REHEARING**

Now comes the State of Louisiana, through its Attorney
General, appearing herein for the sole and only purpose
of answering complainant's petition for rehearing and,
so responding, respectfully states:

Preliminary Statement

The argument set forth in Rhode Island's petition for
rehearing has been adopted by and made the argument of
Alabama in the latter's petition for rehearing. To obviate

repetition, the statement and argument herein contained shall also apply to Alabama's petition as if written in Louisiana's answer thereto in extenso.

I.

In answer to part or section I of Rhode Island's petition for rehearing, Louisiana makes the ensuing statement:

The per curiam opinion of this Court was not predicated on assumption, nor did it constitute an advisory opinion on hypothetical questions of law and fact involving state and federal relations.

Complainant's contentions in the aforementioned respect are primarily refuted by the fact that this Court had no reason to indulge in assumption. Another statement and application were only made of the long-enduring pronouncements made by this Court in cases where complaints or suits involved attacks on Acts of Congress by which government property or territory was granted. (*Van Brocklin v. Tennessee*, 117 U. S. 151; *United States v. San Francisco*, 310 U. S. 16; *United States v. Wyoming*, 331 U. S. 440; *Federal Power Commission v. Idaho Power Company*, 344 U. S. 17).

Complainant levelled an attack on Public Law 31, 83rd Congress, 1st Session, in which Congress granted certain property to the several states, pursuing its exclusive prerogative under Article IV, Sec. 3, cl. 2 of the Constitution. The attack was made an obvious fact, and this Court, far from assuming anything whatever and of passing upon hypothetical questions of fact and law, simply pointed out the clear and unequivocal language of the constitutional provisions aforesaid, supported by judicial decisions of equal clarity and certainty; therefore, this Court had no occasion to resort to assumption.

Louisiana fails to understand the purpose of the point brought out on page 2 of complainant's petition. Surely the fact that the defendant states abstained from going

into the merits in opposing the motion made for leave to file complaint is no reason why this Court should reverse its per curiam opinion and permit the case to be heard on the merits. Nor does Louisiana comprehend why the "grave and far-reaching issues", so called and sought to be raised by complainant, should perforce of their importance cause this Court to ignore Article IV, Sec. 3, cl. 2 of the Constitution and its jurisdictional pronouncements in that regard. Jurisdiction is not conferred on the mere basis of the gravity vel non of the issues sought to be raised in a complaint.

Louisiana is also at a loss to appreciate the relevancy of the following statement appearing on page 3 of complainant's petition: "The suits brought by the complainant states raise issues not only of constitutional power but of the statutory exercise of constitutional power." That statement can only be interpreted within reason to mean that, if and only if the Court should take jurisdiction, it is complainant's surmise that judicial inquiry would be made of constitutional power and the statutory exercise thereof under Public Law 31. Complainant cannot overcome the jurisdictional bar to its wishful action by suggesting to the Court the course of its inquiry should the merits of the case be reached.

Complainant does not strengthen but weakens its position in citing and quoting from the case of *International Longshoremen's Union v. Boyd*, decided by this Court on March 8, 1954. From the standpoint of presenting a justiciable case or controversy and of invoking the equitable jurisdiction of this Court, one of the most flagrant shortcomings in Rhode Island's complaint was the stress placed upon certain contemplated but unforeseeable actions that defendant states might take to the prejudice of complainant in the indeterminate future. Had this Court passed upon nebulous predictions, indeed, such decision would have involved "too remote and abstract an inquiry for the proper exercise of the judicial function", as this Court

said in the case last mentioned; moreover, it is submitted that if this Court had adjudicated upon all of the foreboding contained in Rhode Island's complaint, it would have resulted in an advisory opinion on hypothetical questions of law and fact, the very thing that Rhode Island complains of in its petition.

Complainant makes the following statement on page 5 of its petition:

If the complainant states have standing and right to sue, which this Court does not deny, it is respectfully submitted that the Court should either exercise its jurisdiction and adjudicate the rights of the parties on a full consideration of the applicable facts and law, or it should in its discretion refuse to take jurisdiction."

That statement is one which either complainant or defendants could have made with equal sincerity and consistency in arguing the motion for leave to file complaint, and the Court in its judgment actually followed one of the two alternative courses mentioned. But a declaration of that kind has no more bearing on complainant's petition for rehearing than if it had been said that this Court should or should not permit the complaint to be filed and the case heard on its merits. This Court need not be reminded of the choice it must make in taking one of two courses of judicial action.

II.

In answer to part or section II of Rhode Island's petition for rehearing, Louisiana makes the following statement:

The acts of the defendant states under Public Law 31 have been validated and made lawful, even assuming for purpose of argument that one or more of such states have taken any action at all since the adoption of such statute. Dealing with the property of the United States by grant, such acts of the defendant states, consistent with the terms of the statute, were validated and made lawful by the enact-

ment itself, all in view of the power exclusively vested in Congress pursuant to Article IV, Sec. 3, cl. 2 of the Constitution. To pass upon the acts of defendant states, performed or to be consummated in full conformity with the statute, would be tantamount to judicial interference in a field of national power which Congress alone may exercise.

Louisiana hesitates to respond to Rhode Island's argument to the effect that defendant states acquired no offshore oil resources, beyond the tidelands proper, under Public Law 31, or that what they received thereunder was restricted to the mere right of administering and developing the natural resources of the submerged lands within their seaward boundaries. This particular phase of complainant's argument clearly pertains to the merits of the case and would only be timely in the event this Court takes jurisdiction. Louisiana cannot ignore such argument, however, and let it go entirely unchallenged; so a few observations shall be made to show the fallacy of the position which complainant takes on the point above mentioned.

In the first place, Public Law 31 makes an express grant of the lands involved, together with the natural resources thereof. Surely Congress would not have done such a vain thing as to grant certain lands to the states in one section of an Act and then except the same lands from the grant in another section of the statute.

In the second place, Congress made it entirely clear in the Act that the grant included both the *ownership* of the lands with which we are concerned and the *right and power* to manage, administer, lease, develop, and use said lands and the natural resources thereof. This intention was made increasingly positive by dealing with the ownership in Section 3(a) (1) and with management, administration, development, leasing and use in Section 3 (a) (2).

In the third place, such lands do not fall into any one of the categories of land-acquisitive means as mentioned in Section 5 of the Act. If all of the lands which complainant refers to as being excepted from the grant had been ac-

quired by the United States as a result of "eminent domain proceedings, purchase, cession, gift or otherwise in a proprietary capacity", it stands to reason and is conclusive that this Court would have so held in *United States v. California*, 332 U. S. 19.

Again, if the United States had acquired all of such lands by one or more of the means enumerated in Section 5 of the Act, then complainant must concede that the Presidential Proclamation of September 28, 1945, 59 Stat. 884, declaring the natural resources of the subsoil and sea-bed of the continental shelf to appertain to the United States, served a superfluous and needless purpose.

No matter what was said at the hearings on S. J. Res. 13, Congress dealt with the lands and natural resources conveyed as property of the United States, and this Court identified it as "government property" in *United States v. California, supra*.

In search of legislative intention, (all of which is unnecessary in view of the clarity of the letter of the Act), complainant places great stress on the testimony of the Attorney General of the United States before the Senate Committee on Interior and Insular Affairs, at the hearings on S. J. Res. 13, 83rd Congress, 1st Session, in which that official suggested that the grant contemplated by S. J. Res. 13 be restricted to the power of administering and developing the lands, leaving title to and ownership of same in the Federal Government.

With full respect accorded the Attorney General's views, there is nothing contained in the Committee Report on S. J. Res. 13 or in Public Law 31 itself to show that the Attorney General's suggestion was written into the Act which was adopted. True, Senator Cordon, acting as Chairman of the Senate Committee aforesaid, stated on the Senate floor, in effect, that the exceptions set forth in Section 5 of the Act were urged and recommended by the Department of Justice, but those recommendations cannot be assumed to have included the suggestion made by the

Attorney General to the Senate Committee that title to the lands remain in the Federal Government and that the states be only empowered to manage and develop such property.

Expressing once again this defendant's high regard of the Attorney General's views, it must be said that it is most unusual and extraordinary that a litigant seek to establish legislative intent by the testimony of a witness before a committee of the Senate.

Conclusion

For the reasons set forth in the foregoing answer, Louisiana respectfully urges that Rhode Island's petition for rehearing be denied.

Respectfully submitted,

FRED S. LeBLANC,
Attorney General,
State of Louisiana

JOHN L. MADDER,
Assistant Attorney General,
State of Louisiana

BAILEY WALSH,
Special Assistant Attorney General,
State of Louisiana

April 5, 1954.

Certificate of Service

I, John L. Madden, Assistant Attorney General of the State of Louisiana and of counsel for said State in the above and foregoing answer, being first duly sworn, certify that I have served a copy of said answer upon each of the following named persons by mailing a copy of the answer to them, postage prepaid, prior to the filing of said answer, and at the following addresses:

Hon. William E. Powers
Attorney General of Rhode
Island
State Capitol
Providence Rhode Island

Hon. John Ben Shepperd
Attorney General of Texas
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Hon. Edmund G. Brown
Attorney General of
California
State Building
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Hon. Richard W. Ervin
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Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the
United States
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Hon. Herbert Brownell, Jr.
Attorney General of the
United States
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1511 K Street, N. W.
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JOHN L. MADDEN
*Assistant Attorney General,
State of Louisiana*

City of Washington, District of Columbia—ss.

Subscribed and sworn to before me this 5th day of April,
1954.

BYRD C. REID
*Notary Public in and for
Said City and District*

APR 8 1954

HAROLD B. WILLEY, Clerk

IN THE
Supreme Court of the United States

October Term, 1953
No., Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,
vs.

STATE OF LOUISIANA, STATE OF FLORIDA, STATE OF
TEXAS, STATE OF CALIFORNIA, GEORGE M. HUMPHREY,
DOUGLAS MCKAY, ROBERT B. ANDERSON, JY BAKER
PRIEST,
Defendants.

**Response of the States of California and Florida to
the Petition for Rehearing of the State of Rhode
Island and Providence Plantations.**

EDMUND G. BROWN,
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Assistant Attorney General;
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Assistant Attorney General;
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State Capitol,
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Florida.*

April 6, 1954.

TABLE OF AUTHORITIES CITED

CASE	PAGE
Bindczyck v. Finucane, 342 U. S. 76.....	3

MISCELLANEOUS

Executive Hearings before Senate Interior and Insular Affairs Committee on Sen. J. Res. 13 and other Bills, 83rd Cong., 1st Sess. 1347-48 (1953).....	4
22 Law Week, p. 4171.....	1
Senate Report No. 133, 83rd Cong., 1st Sess., 20 (1953).....	4
Senate Report No. 411, 83rd Cong., 1st Sess., 52.....	5

STATUTES

Outer Continental Shelf Lands Act, 67 Stats. 462.....	5
Public Law 31.....	2
Submerged Lands Act, 67 Stats. 29 (1953).....	1
Submerged Lands Act, Sec. 2(a).....	5
Submerged Lands Act, Sec. 3.....	2, 3, 5
Submerged Lands Act, Sec. 3(a).....	5
Submerged Lands Act, Sec. 5.....	2, 3, 4
Submerged Lands Act, Sec. 5(a).....	3, 4, 5
Submerged Lands Act, Sec. 8(a).....	5
United States Constitution, Art. IV, Sec. 3, Cl. 2.....	1

IN THE
Supreme Court of the United States

October Term, 1953
No., Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

vs.

STATE OF LOUISIANA, STATE OF FLORIDA, STATE OF
TEXAS, STATE OF CALIFORNIA, GEORGE M. HUMPHREY,
DOUGLAS MCKAY, ROBERT B. ANDERSON, IVY BAKER
PRIEST,

Defendants.

**Response of the States of California and Florida to
the Petition for Rehearing of the State of Rhode
Island and Providence Plantations.**

On March 15, 1954, this Court denied the motions of
Rhode Island and Alabama for leave to file complaints
attacking the constitutionality of the Submerged Lands
Act, 67 Stat. 29 (1953).¹ 22 Law Week 4171. Rhode

¹Rhode Island's implication that she was taken by surprise by
the ground of the Court's decision—Art. 4, Sec. 3, Cl. 2 of the
Constitution—does not withstand examination. That ground was
urged as decisive of the cases in three different briefs filed for
the defendants. (Brief for individual defendants, p. 22; Brief
for California and Florida, p. 49; Brief for Louisiana, p. 7.) It
should be noted in passing that the Court's opinion did not recog-
nize, as Rhode Island asserts (p. 17), "the right and standing of
the complainants to sue."

Island has filed a petition for rehearing which has been adopted by Alabama in the companion case, *Alabama v. Texas et al.*, No., Original. The sum of Rhode Island's petition is that all offshore lands are excluded from Public Law 31 by Section 5, which excepts from the operation of Section 3 "all lands acquired by the United States . . . in a proprietary capacity."² California and Florida believe that this argument requires only a brief answer.

1. Rhode Island's argument based on Section 5 was fully presented to the Court by prior briefs and argument. The Reply Brief for Rhode Island pointed out the exception in Section 5 of "all lands acquired by the United States . . . in a proprietary capacity" and urged that, "since the United States has proprietary as well as sovereign rights in the off-shore lands, Public Law 31 is ineffective by its own terms to transfer the rights and interests of the United States therein." (Pp. 7-8, n. 4.) Moreover, at the oral argument before the Court, counsel for Alabama pressed this argument at some length. [Tr. pp. 41-43.]

It is also clear that the Court itself was cognizant of the argument based on Section 5, which is the subject of the petition for rehearing. In response to the contention of counsel for Alabama that the offshore lands "were specifically excepted from the operation of the Act by

²Division I of Rhode Island's petition (pp. 2-5) asserts that the Court's opinion upholding Congress' power to grant the submerged offshore lands is "advisory" in character because Section 5 indicates that Public Law 31 does not grant such lands. Division II of Rhode Island's petition (pp. 6-16) contends that, in view of the exception in Section 5, the defendant States are not authorized to exercise control over the marginal sea lands.

Section 5 thereof," Mr. Justice Burton asked: "Do you think that makes sense?" [Tr. p. 42.] When counsel for Alabama renewed the argument somewhat later, Mr. Justice Reed remarked: "Well, I understand that argument." [Tr. p. 44.] Rehearing is plainly not warranted to consider the repetition of an argument which was adequately presented to the Court on the prior hearing.

2. Despite its full presentation, this argument based on Section 5 was not referred to in any of the four opinions in this case. This suggests that, not only did the argument fail to persuade the majority, but it was also not convincing to the two dissenting Justices. The reason lies in the fact that the argument, to borrow Mr. Justice Burton's phrase, just does not make sense.

Congress considered legislation relating to the submerged lands of the marginal sea almost continuously for nine years. The lengthy debates in both Houses of Congress which culminated in the passage of the Submerged Lands Act centered around the disposition of those lands to the coastal States. Yet, against this background, Rhode Island claims that the exception in Section 5 of "all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift or otherwise in a proprietary capacity" must be read to mean that the Act has nothing to do with the offshore lands. "Such abstract reasoning," as the Court said recently in analogous circumstances, "is mechanical jurisprudence in its most glittering form." (*Bindzcyk v. Finucane*, 342 U. S. 76, 85 (1951).)

There is clear and unequivocal evidence that Congress did not intend that Section 5(a) should be interpreted as contradicting the express provisions of Section 3, as

Rhode Island now suggests. In the Executive Hearings of the Senate Interior Committee, which was responsible for revising Section 5, Senator Long suggested that an argument could be made that another exception in Section 5(a) excluded the entire marginal belt from the Act. Senator Cordon, acting Chairman of the Committee, replied as follows:

"Senator Cordon. I can see the logic of that argument, and that is that it could be claimed. Of course, it would do violence to the whole bill, and the rules of statutory construction would necessarily have to operate, and it would not be the position taken. But I am perfectly willing here to suggest that the claim of right [under the exception clause] be other than a claim that rests in either of the three decisions, and spell them out. That would eliminate any claim under the court decision." (Executive Hearings before Senate Interior and Insular Affairs Committee, on Sen. J. Res. 13 and other Bills, 83rd Cong., 1st Sess., 1347-48 (1953).)

This colloquy is reflected in the Report of the Senate Interior Committee on Sen. J. Res. 13, which states:

"However, the committee wishes to emphasize that the exceptions spelled out in this amendment do not in anywise include any claim resting solely upon the doctrine of 'paramount rights' enunciated by the Supreme Court with respect to the Federal Government's status in the areas beyond inland waters and mean low tide." (Sen. Rep. No. 133, 83rd Cong., 1st Sess., 20 (1953).)

Rhode Island attempts (p. 11) to discount this statement by saying that the claim of the Federal Government did not rest "solely" on paramount rights." However, a fair reading of the Committee's statement indicates that

it was answering in advance the very argument Rhode Island is now making. Congressional bodies seldom speak as clearly as this Committee did in indicating that offshore lands are not excluded from the Act by reason of the fact that they were previously held, in the *California*, *Texas*, and *Louisiana* opinions, to be subject to the paramount power of the United States.

There is no need to labor here the point that Congress, in passing the Submerged Lands Act, intended to grant the submerged lands within historic boundaries to the coastal States. A reading of the reports and debates clearly establishes that neither proponents nor opponents of the legislation understood that the grant of offshore lands in Section 3 would be nullified by an exception in Section 5(a). Moreover, the Outer Continental Shelf Lands Act, 67 Stat. 462 (1953), was squarely based on the premise of State ownership and management of the submerged lands within historic State boundaries. Sections 2(a), 3(a), 8(a).

Rhode Island's flat assertion (pp. 12-13) that Attorney General Brownell "no doubt" drafted Section 5 to exclude all offshore lands from the operation of the Act is wishful thinking. Although the Department of Justice at first tentatively suggested that the grant to the States be limited to management powers, after Congress had drafted the present Act all departments of the Administration fully supported the principle of State ownership and approved the language and intent of Section 3. President Eisenhower spoke for the Administration as a whole when in signing the Act he referred to "as recognizing the States' claim to 'the submerged lands within their historic boundaries'" (Sen. Rep. No. 411, 83rd Cong., 1st Sess., 52.)

Conclusion.

The argument advanced by Rhode Island, as the ground for rehearing was fully presented to the Court at the original hearing. This argument, which would construe an exception clause so as virtually to nullify the Act, is plainly without merit. The States of California and Florida therefore respectfully urge that the petition for rehearing be denied.

Respectfully submitted,

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April 6, 1954.

Certificate of Service.

I, William V. O'Connor, certify that I have served a copy of the foregoing Response upon each of the following named individuals by mailing a copy of said Response to them postage prepaid, at the following addresses:

Hon. William E. Powers
Attorney General of Rhode Island
Providence County Court House
Providence, Rhode Island

Hon. Fred S. LeBlanc
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

Hon. Si Garrett
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Done at Los Angeles, California, this 6th day of April,
1954.

WILLIAM V. O'CONNOR,

Chief Deputy Attorney General of California

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

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PROVIDENCE PLANTATIONS,
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v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF
TEXAS; STATE OF CALIFORNIA; GEORGE M. HUM-
PHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON;
IVY BAKER PRIEST,

**ACKNOWLEDGMENT AND RESPONSE OF THE STATE
OF TEXAS TO THE PETITION FOR REHEARING
OF THE STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS**

The State of Texas hereby acknowledges receipt of Complainant's Petition For Rehearing filed by the State of Rhode Island and Providence Plantations and receipt of a Petition For Rehearing filed by the State of Alabama adopting the argument advanced by Rhode Island.

Rhode Island and Alabama petition this Court for rehearing on grounds which were clearly and em-

phatically urged in the briefs and oral arguments previously submitted. No new arguments are presented.

Since the Court, including the dissenting Justices, has already heard and considered and has obviously and properly rejected the only argument now advanced, the State of Texas respectfully urges that the petitions for rehearing be denied.

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April 9, 1954

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STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

PETITION FOR CLARIFICATION OF DECISION

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April 14, 1954

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

No. _____, Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS;
STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS
McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

PETITION FOR CLARIFICATION OF DECISION

In its answer to Rhode Island's petition for rehearing, Louisiana explicitly admits that "the defendant states abstained from going into the merits in opposing the motion made for leave to file complaint." Louisiana's answer further explicitly admits that the meaning and effect of Public Law 31 "clearly pertains to the merits of the case and would only be timely in the event that this Court takes jurisdiction."

On the other hand, in their joint answer to Rhode Island's petition, California and Florida attempt to argue

that the Court actually considered and rejected the proposition that lands acquired by the United States in a proprietary capacity were, as Public Law 31 expressly provides, excepted from the operation of section 3 of that law, although there was no reference at all in the per curiam opinion to Public Law 31 and no consideration at all given in that opinion to the meaning and effect of Public Law 31.

The excerpt from the Executive Hearings of the Senate Interior Committee quoted in the answer of California and Florida to Rhode Island's petition for rehearing (p. 4) only serves to confirm that the proponents of Public Law 31 were conscious of the ambiguity of that statute and for political purposes left it deliberately ambiguous.

The position taken by California and Florida would attribute to this Court's refusal to permit the filing of Rhode Island's complaint a prejudging of the merits of grave and important issues which this Court has not considered and on which Rhode Island has not been heard. But it is not the practice of this Court to decide or prejudge matters of substance and importance without a full hearing of the parties and without an opinion of the Court on the essential points at issue.

Obviously there is conflict, even among the defendant states, as to what the Court has decided. A hearing on the serious issues involved and a clarification of the Court's decision are urgently required in the public interest.

Rhode Island respectfully submits that it has a standing and interest to sue and that this Court should take jurisdiction and decide whether Public Law 31 does or does not surrender to the defendant states lands acquired by the United States in a proprietary capacity and whether Public Law 31 does or does not make lawful the acts of the defendant states against which Rhode Island complains.

If, however, this Court after considering petition for rehearing still adheres to its decision dismissing the motion of Rhode Island for leave to file complaint, Rhode Island

respectfully requests that the Court should at the very least clarify its decision and make clear beyond doubt that this Court has not decided or prejudged without a hearing the meaning and effect of Public Law 31. It is evident that such clarification is required to enable the Congress to deal intelligently and responsibly with the situation resulting from the Court's dismissal of Rhode Island's motion. See discussion of Senator Douglas' proposal (sponsored by fourteen Senators) for the administration of the lands under the marginal sea owned by the United States as part of the outer Continental Shelf. Congressional Record, April 1, 1954, pp. 4095-4100.

Respectfully submitted,

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EUGENE GRESSMAN

Of Counsel

April 14, 1954

Certificate of Counsel

We hereby certify that this Petition for Clarification of Decision is prepared in good faith and not for delay.

We further certify that a copy of this Petition has been served on all parties of record by mailing a copy of same to them, postage prepaid.

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